Islamic Fiqh Academy
(India)

USE OF INTERNET

AND OTHER MODERN SYSTEMS OF COMMUNICATION FOR RELIGIOUS PURPOSES

استخدام الإنترنت
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Translated by
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Use of Internet and Other Modern Systems

Of

Communication

For

Religious Purposes

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بسم الله الرحمن الرحيم

In Name of Allah, the Most Merciful, the Most Gracious

يا أيها الذين آمنوا أطيعوا الله و أطيعوا الرسول
و أولي الأمر منكم ، فإن تنازعتم في شيئ
فردوه إلى الله والرسول إن كنتم تؤمنون بالله
واليوم الآخر ، ذلك خير و أحسن تأويلا .

O THOSE WHO BELIEVE! OBEY ALLAH, AND OBEY THE MESSENGER, AND THOSE CHARGED WITH AUTHORITY FROM AMONG YOU. IN CASE YOU DIFFER IN ANYTHING AMONG YOURSELVES, REFER IT TO ALLAH AND HIS MESSENGER, IF YOU DO BELIEVER IN ALLAH AND THE LAST DAY. THAT IS BEST AND MOST SUITABLE FOR FINAL DETERMINATION.

(4:59)

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بسم الله الرحمن الرحيم

Preface

The Holy Prophet (SAWS) has declared, *"You shall never go astray from the Right Path so long as You remain clung to the Book of Allah and my Sunnah"*.

As the Divine Guidance is related to Faith and Belief, so it encompasses the practical sphere of human life as well. The Book of Allah and the *Sunnah,* therefore, have been provided with the principles so comprehensive as to offer the Muslims such solutions to their ever-emerging problems which, on one hand, are well-balanced and consistent with the human nature; and hold good and ensure real success for them on the other, apart from that those problems and issues are occasioned by the circumstantial changes or by the emergence of new means and hitherto unknown inventions.

Although the invention of means and instruments has always been a phenomenon concurrent with the progress of the human civilization, yet following the Industrial revolution of the seventeenth century the world witnessed a marked development and swiftness in terms of both the discovery into the hitherto unknown forces of nature and invention of new means and instruments. This revolution brought into being such marvelous things which lay earlier beyond human imagination. From among the areas which ex-

perienced quite extraordinary scientitic development one is that of communication and information.

Different parts of the world have been favored by Allah, the Creator, with different types of abilities and, quite obviously, it is the medium of communication through which man collects information from all over the world. This information and awareness levels the ground for him to give and take and exchange the ideas.

Since the modern advanced means of communication are being used for the dissemination of the ideas, ideologies, the exchange of knowledge, researches and in conducting business deals, they have occupied a very special import in the modern world.

From among the modern means of communication the *Internet* is even more important. Through the Internet information of every type can be gathered even from the remotest parts of the world within minutes for nominal expenses. Unfortunately, this highly successful system of communication is being so abundantly used for negative, immoral and evil purposes that this aspect of it cannot be ignored or belittled.

With this perspective, the Islamic *Fiqh* Academy of India made this issue the object of its collective thinking in its twelfth and thirteenth seminars held respectively during 11-14 February, 2000, at Darul Uloomil Islamia, Basti (U.P.) and during 13-16 April 2001, at Jamia Sayyid Ahmad Shaheed, Katoli, Malihabad, Lucknow. At both the seminars the two aspects of the problem were discussed separately. Precisely

speaking, while the theme of the Twelfth Seminar was *"The use of Internet and other modern means of communication for religious purposes,* the Thirteenth Seminar centered round *The Use of Internet and other means of Communication for conducting marriage and business transactions.*

Fundamentally, the Academy holds that the use of the means has to be governed by the ends and objectives for which to use them. We therefore are required to use the lawful means for reform, calling human beings to Islam, enjoining the people what is right and forbidding them what is wrong. They, likewise, may also be used for other lawful ends and concluding business and other social contracts, proceeding with coution about the delicacy of the matters, as required by the *Sharia.* We, on the other hand, are asked by the Law of Allah to stay away from employing them in the acts of disobedience to Allah and His Apostle.

The papers presented to the seminars have been collected in the present volume. In fact, the volume has two parts. While the first part discusses the various aspects of the use of modern means and systems of communication for religious purposes, the second one deals with the legal aspects of the use of Internet and similar other advanced systems for concluding the *nikah* and business transactions.

After the demise of Maulana Qazi Mujahidul Islam Qasmi, the founder of the Academy, an editorial board was constituted which comprised several learned scholars associated with the Academy. The

editorial board was assigned the task ot revising the present collection of papers and then to select the important ones, curtailing the details wherever necessary. The Editorial Board completed the whole editing work and offered the scrutinized the book to the people of knowledge for their religious benefit.

O Allah! Show us the Truth and make it easy for us to follow; and show us Falsehood as it is and make it easy for us to eschew from it.

Khalid Saifullah Rahmani
General Secretary, Islamic Fiqh Academy
New Delhi (INDIA)

Internet: An Introduction

By: **Tariq Sajjad** Senior Executive Engineer

(Since some of the participants of the Seminar might not have in possession of a good knowledge of Internet, its ways of functioning, it deemed fit, at the very outset of the seminar, to acquaint them at least with a surface knowledge of the Internet. Hence the present introductory note. Editor)

Towards the end of the twentieth century, and entering of the twenty first one, the world heard the footfall of a new revolution taking place on the strength of computer and Internet. The revolution surfaced itself very quickly, leaving the human beings baffled. The revolution not just affected the collective structure of the human society, it also brought thorough changes to the individual and altered the precepts and practices, even ideologies of the people on individual level.

The world had earlier undergone through two revolutions, say, the Agricultural Revolution and the Industrial Revolution. Now, during the last decade, the world experienced a third revolution, termed by some people as the Info-Revolution and by others as the Information Super Highway. In short, the Internet, the working force behind this revolution, engulfed the whole gamut of the human life within a very short span of time not exceeding few decades.

The Internet system has completely altered the meaning of knowledge and the ways of its attainment.

Now the knowledge stands tor a maximum stock ot information gathered by one. The more information one possesses, the more knowledge one acquires. The same knowledge has become the sole factor to lead the man to power and wisdom. The symbiotic relationship between knowledge and power may precisely be put as under:

Information¿ ▸ Knowledge ▸ Power ▸ Wisdom. Today, the total information lies in the form of '0' and '1'. These two digits have tronsformed the world into digital world. The question was how to tame the information existing in the form of these two smaller digits. Internet is the only means by virtue of which whole the information now lies in our finger tips, thus proving literally true the well-known English saying "*Information at your finger tips*".

What the Internet is?

Connected by innumerable bigger and smaller computer networks the Internet is a worldwide system to which more than 600 million people of the world are attached and share the whole gamut of the information it has. From 20% to 50% computer sets are getting connected to it every year. Diminishing the geographical frontiers of the countries, the Internet system has changed the world into a global village. To use simple words, the Internet is the biggest computer network to which more than 160 countries of the world are attached. In India, for instance, there are over 20 million Internet users and a 200% increase is being noted every

year. A very distinguishing feature of the Internet system is that through it you can have an access to any person in any corner of the world only within minutes.

More importantly, this network dispenses with the need to have separate sets of personal computer, telephone, radio, television and post office box and personal printing press; for this marvelous network does stand for all in one.

History of Internet

The invention of the Internet dates back to 1969 in the USA in connection with a defense project 'Advanced Research Project Agency'. Prepared with a threat perception from the erstwhile communist USSR's nuclear arsenal, the Pentagon's computer was attached to a network workable even when the States is under the nuclear attack. Later, in 1980s, the National Foundation started to use this network freely for research and educational purposes. The Foundation attached five bigger Super Computers to the Internet. In 1990s, the European High Energy Physics Laboratory developed a software, which enabled the Net users to trace out any sort of information on the net within seconds. Since then the network assumed the name 'World Wide Web.' The world as whole now stands encircled by this 'web'.

How does the Internet work?

A set of rules, termed Transmission control Pro-

tocol, is used to transmit information from one computer to another. This protocol is the device to use for the exchange of information from one computer set to another one. The Process is that every information is divided into small packets, the first part of each packet having the address where the packet has to be sent. Once these packets got to the point assigned, they have to undergo the process of rearrangement. In case any one packet is missed during the process of transmission, the target computer machine makes a request to the source machine to send the missed packet again. This way all the packets got to their target point undamaged, where they are converted to the form of information again. Every machine connected to the Internet has its own special address and number. Two computers sharing the same number couldn't be attached to Internet system. The message and information sent can by no means be caught by other computers than the target one, whose specific number is already provided therein.

Who controls the Internet?

This is of course a very interesting question 'who is the owner of such a colossal store of information. Is there a government which controls it? The answer is that the Internet is controlled neither by an individual nor by any government. Even there is no central point of its location; rather, it is equally shared by the representatives of all the countries. All the Internet user countries of the world have entered into an agreement

binding them not to hinder the exchange ot informa-tion. Internet Society is a worldwide body, which promotes the exchange of information.

The Internet Architecture Board is another worldwide institution, which keeps the records of ad-dresses used by the Net-connected computers. Like-wise, Internet Engineering Task Fore (IETF) is a yet another worldwide institution, which solves the opera-tional and technical problems of the Internet. All these three bodies have the representation of many countries of the world.

Importance and usefulness of the Internet

The Internet is useful beyond imagination. Fol-lowing are some very common facilities that exist to-day thanks to the Internet:

1. **E-mail:** This is the electronic mail system through which you can send or receive letters or files from your friends and relatives from any corner of the world within seconds. With the emergence and de-velopment of the e-mail system the correspondence has turned just a matter of seconds, and the tradi-tional male system is turning anachronistic as the time is passing. Sending e-mail is an easier process. Suppose you have a friend in Canada whose ad-dress is akram@hotmail.com. To send your e-mail to him first of all you shall be required to prepare the text of your letter and save it. Then go to a mail software and write the above address there placing you letter's text there. Then you are required only to

press some keys to send your letter/tile to the destinations. At the same time you may confirm whether your letter has reached the destination or not. For all the pertinent details: wherefrom the letter, timing of reading the letter etc, do appear forthwith on the letter itself. You may have the information whether the target person has read the letter or not. If you want to send the same letter or file to more persons than one, you may do so very easily, you have to write their addresses separately and then send the same letter/file to them in single attempt. The special features of the electronic mail are as follows:

- E-mail takes only seconds to send the correspondence to its destination apart from the distance between the addressee and the addressed.
- The mail is fully secure and gets to its destination accurately.
- Only the addressed person may open the mailbox.
- Electronic mail is unimaginably cheaper, as compared to other mail systems.

2. **World Wide Web:** This is a very important feature of the Internet. By the worldwide web you may collect information from any corner of the world without moving from your station. You want to have the information about a university, different courses it offers to the students; about a company's products, or you want to trace out a missing person, get in-

formation about a book etc, you can collect these information from the World Wide Web. To this web are attached all the computers of the world and they are capable of providing all the required information to your computer in the twinkling of an eye. For this reason all the major companies and business establishments spread over the world are getting themselves registered to the Web, most of them placing their advertisements on the Web so as to make themselves as well as their products known on a scale wider than the radio and TV. Most Companies and the institutions are creating their own websites on the Net. Actually, the website of a particular company provides detailed information about that company's products. All the Websites are given a particular address termed 'website Address. Having typed that address on his personal computer, any person belonging to any corner of the world may access to the company advertised and the details of its products. Most newspapers and magazines of the world are available on the Net. If you, for instance, want to read the *Times of India* on the Net, you will have to type on your PC the following address: http://www.timesofindia.com and the newspaper shall appear forthwith on your computer screen. Most companies, institutions, organizations, welfare organizations, political parties and educational institutions have their presence at the Net.

3. **Search Engine:** Often it happens that you want to search the Internet to gather knowledge about a

topic but you have no address of the site concerned. There are several sites on the Net for the purpose, which are termed as the Search Engine. Suppose you want to know about the courses offered by the al-Azhar University of Egypt and how to get admission to them, what you have to do only is to go to a search Engine and then type there al-Azhar University, Egypt. Within seconds you will have all the details available on your computer screen. We are giving here a list of important search engines:

(1) www.goole.com
(2) www.altavista.com
(3) www.khoj.com
(4) www.yahoo.com
(5) www.rediff.com

4. **Internet Telephone:** If your personal Intern-connected is equipped with an advanced microphone and speaker, then you are fully able to use your computer like the telephone as well. Internet phone system is very cheaper and easier to use; now you need not talk to your relatives in Canada or elsewhere in the world with the payment of ISD charges. The Internet phone has enabled you talk to them for hours only in local charges. The Internet phone is far cheaper because it sends the voice to the target after converting it into data through the computer networking. This act of conversion is termed PACKET SWITCHING. Actually, while talking by the traditional telephone system an un-breaking connectivity is maintained through the intermedi-

ary ot the EXCHANGE, termed "CIRCUIT SWITCHING." The difference between the two being the packet switching needs not maintain a continual connectivity between the talking parties. For the Internet phone system the question of distance between the talking parties is quite meaningless; it makes no difference for it whether you are talking to a person located in a house adjoining your's or to a person who is sitting thousands of miles away. The Internet phone system treats both the shorter and longer distances as the same. In fact it has marvelously converted the longer distances into seconds.

5. **Internet Chat:** The chatting facility enables the users talk and exchange views with other like-minded people. Several forums are available on the Internet which facilitate the users exchange their views on different issues and problem; and thousands of people are practically doing so. Few forums of the type are given below:
   - Qur'an Forum
   - *Fiqh* Forum
   - Women Forum
   - Students Forum
6. **Internet and electronic commerce**: Thanks to the Internet; the e-commerce as well as e-business is now in full swim. Most companies and trade establishments are doing online business. Now you have the facility to purchase anything of your choice from any place across the world without moving from your location. Similarly, the Internet system

facilitates for you to get train reservations, banking, payment of the telephone bills, income taxes, etc. Now the Internet user is no longer required to queue up for hours to clear the every day payments as the Internet facilities have dispensed you with all such ordinary things.

7. **Internet in the field of education**: Internet and its offshoots, say e-mail, World Wide Web etc, have brought revolutionary changes to the field of education. Thanks to these facilities, now any one else can attain the best education and academic courses under the guidance of the best experienced teachers, without bothering himself to traditional ways of acquiring learning and education. The Internet has opened quite unprecedented avenues and opportunities for adult education, job training and career building. In short, education is now available for all, though costlier by far. The invention of the CD ROM and the Multi-media has obviated the problem of the thickness of the books. You can imagine the extent of this revolution by simply knowing the fact that the much larger books, like the Encyclopedia Britannica, which thus far needed a separate shelf for its preservation and safety, has now been compacted into a much smaller disk, with the result that you now are able to gather any type of information within seconds by simply inserting the disk into your computer.
   - The e-mail facility has eased the research work; any scientist conducting research on any subject

can easily connect himsell with his/her tellow researchers by e-mail and thus update his/her knowledge and know the nature and scope of the similar researches being conducted by them. People of similar interests are exchanging views from different forums by using the Internet facilities. The computer and Internet systems have furthered the mode of Distance Education and online education. Education now at your doorstep. The facility is helping the teachers and educationists in exchanging views and in preparing the best courses, efficient lectures and teaching materials.

- The wide range of the Internet facilities has taken the learners and teachers to newer thoughts and trends as their interaction has become possible on the global level. Teachers and learners belonging to various countries are stating their views on a given topic under the forum of 'Learning Circle' with the view to arrive at the best standard results. Software has taken the place of the conventional notebooks and work books, and the software have enabled the teachers of delivering standard and very informative lectures. Through the e-mail system the teachers are informing the learners' parents of their children's progress reports, and thus a good understanding is developing between the students, their teachers and their parents.
- The Internet has drastically changed the conven-

tional concept and method ot examination. Now the computer network has introduced the concept of holding single-time examination, worldwide the result of which becomes available within hours. There is a rising tendency of the self-evaluation in lieu of the conventional concept of examination in the students and learners, and as a result of this tendency, the fear of failure is diminishing. Under the online open education system courses of various types are available for the students, and the students can avail of such things without moving from their locations. There is a marked rise in the number of the online universities and virtual universities under the concept of Distance Education. Students and learners registered under this system are getting higher education without moving from their homes. These universities have placed all their academic and teaching materials on the Net which are available for the students to download. In short, the Internet has wholly changed the educational scenario.

8. **Educational websites:** The Internet, as expressed in detail above, has now turned out a major means of education. Hundreds of millions of educational pages are now available on various educational websites. Teachers, learners and their parents may avail of them without paying anything. This multitudinous material could be downloaded anytime, anywhere. To mention a few of these sites

here:

(a) www.bigchalk.com
(b) www.britanica.com
(c) www.classroom.com
(d) www.studyeweb.com
(e) www.math.com
(f) www.microsoft.com/education

9. **College guide on Internet:** Information about various colleges, full details regarding the courses of studies they offer, ways of getting admission to them and the scholarships offered are also available on the Net. Notable sites are as follows:

(a) www.collegenet.com
(b) www.compumatters.com
(c) www.daycourses.com
(d) www.educationstimes.com
(e) www.educationcare.com
(f) www.admissionguru.com
(g) www.campusabroad.com
(h) www.vidyarthi.com
(i) www.studentsguidance.com

10. **Information available on the Internet regarding career guidance:** After passing the pre-university courses the students in general are not able to decisively choose what career they should have for their future. Many sites are available on the Net to guide the students choose newer education, employment and career opportunities. In addition, there are many sites which offer career counseling and career planning. I.Q. test and personality tests

for students are also available online. Numerous sites are active in this field. Notable from among them are the following:

a. www.careerlauncher.com
b. www.careerdowell.com
c. www.careerperfect.com
d. www.emodl.com
e. www.iqtest.com
f. www.allthetests.com
g. www.how_to_study.com
h. www.academictips.com
i. www.entranceonline.com

11. **Availability of information on the Internet regarding the Distance Education:** The Internet has made the Distance Education system even cheaper, easier and more flexible available for all any time anywhere throughout the world. The Internet sites active in the area of Distance Education system are as under:

a. www.ignou.ac.in
b. www.douglas.bc.ca
c. www.telearm.ca
d. www.vlei.com
e. http://livtual_4.cs.sfu.ca

Impact of the Internet on society

The tact that the Internet has now become a major means of education and learning and has created countless facilities can't be doubted. It indeed has shrunk whole the world and placed it, in a sense, in the computer system. However, equally bitter is the fact that the capitalistic approach of the West towards human life and society its immoral thoughts and deprave mode of life have perverted the Internet and corrupted it beyond imagination. The Internet facilities have been exploited to progress the concept of consumerism to the extent that man has now touched the upper limits of blind materialism. It is in fact a double-edged sword which can serve the cause of evil as much as it serves the cause of good and virtue. As there exists an unimaginable wealth of knowledge on the Net, so no dearth is there of the deprave material, obscene and nude literature. It is now beyond the might of the western thinkers to stem the rising tide of moral corruption and deprave mode of living. The tide is now knocking our door. The major challenge of the day is how to use this marvelous scientific invention to uphold the high moral values so as to save the new generation from the moral and social corruption. *Ulama*, Muslim thinkers, and our intellectuals will have to deliberate on the question how to change the current course of things. The present social system, which is largely based on the concept of the scientific superiority over all other concepts of life, has left no room for a God-oriented, rightly guided, value-based system of life.

Given the tacts as above, we will have to ensure that our younger generation is able to make a maximum use of the Net for positive purposes avoiding from its negative and destructive aspects.

The Questionnaire

Prologue

Today the advanced machineries and an unprecedented scientific development have rolled up the distances. The news from one end of the globe may be circulated to its other farthest ends within too short a time to be imagined. The means and the instruments have been devised and developed are not just for personal use for the day-to-day purposes, they have emerged to be far too effective means for the propagation of the individual and collective thought and ideologies as well. Undeniably, in the past too several means were available for the purpose, yet since the modern advanced means are marvelously fast-working, their use for unjust, negative purposes and base ends has now become a commoner phenomenon than their employment for just and good purposes and positive ends.

After the radio and the tape recorder, the present era has moved to TV and the Internet. Radio and the TV systems are being used to broadcast the news, to held countless entertainment programs and to propagate religious, thoughts and ideologies. In different countries the State-sponsors different religious programs according to their own schemes and priorities.

In many countries the radio and TV stations may be hired for the purposes. Even there are countries which grant permission to launch and establish private

stations to use tor one's own purposes.

Radio and TV apart, the Internet has made the dissemination of the news and the thoughts faster still. The employment of the Internet for the purpose is very easy compared to the radio and TV. Unlike the TV or radio, the Net does not require so large apparatuses to work. As a person listens to the radio or the TV inside his/her house, so he/she can disseminate his/her thoughts and ideologies to the farthest corners of the globe sitting in a corner of his/her house.

Going by its very nature, the Falsehood is always quick to adopt all such quick-working means to gain currency in less time. Then the situation gets worsened despite repeated warnings: the evil penetrates deep into the masses and the majority of the people gets accustomed to the use of those means. Consequently, they cast deep effects on them, thus damaging their moral values and religious perceptions. Under such circumstances it becomes impossible to fight that evil without the employment and use of the same means and systems.

With turning the radio a commonly popular means, the *Ulama* permitted its use for religious purposes like the recitation of the Qur'an, publicity of religious speeches and the religious knowledge. Even, sometimes the *Ulama* themselves took part in such programs, as we categorically know about Pakistan. But the stand was pertinent to the State-owned radio facilities, as has been, and still exists, the case in India and Pakistan.

However, the situation has now drastically changed. The growing trend of privatization has now left the door of establishing radio and TV stations wide open for the private sector as well. Now we face the question whether it is lawful for Muslims to launch their own radio and TV stations and channels with a view to serve thereby the religious purposes. The question has assumed even greater importance given the fact that the peoples belonging to other religions and movements have practically launched their own channels and stations and are using them for the propagation of their thoughts and ideologies.

So far as the case of the Western countries is concerned, the use of modern means of communication there is too common. There are numerous private stations and TV channels dedicated to work round the clock against Islam and its teachings, sowing mistrust about its tenets, teachings and Islamic moral standards. They broadcast immoral programs and prepare their CDs and to publish them publicly. The Western masses are not just deeply interested in such things, but also have become very important to them from there learning viewpoint.

Precisely speaking, only the modern means of communication hold sway over the Western masses and have emerged out to be the only popular and serious ones, the most reliable source of gathering knowledge and information.

This state of affairs has forced the men of religion, concerned for Islam and its teachings, into taking a

serious note ot the situation and adopting, within the limits of *Sharia*, the same means to counter the evil effects caused by the misuse of these communicational systems.

As mentioned above, the Internet serves the purposes of both the radio and the TV at once and, obviously, it is quite easy to use it for a much wider circulation of any idea or thought. More so, it is gaining currency speedily both in the Western and eastern countries. It is very easy to use it even personally and involves no much longer arrangements and apparatus. It is being used for destructive purposes on a much wider scale under the guise of introducing Islam. Most misled sects, from among both Muslims and non-Muslims, have fed the Internet with their anti-Islam, unfounded ideas. The Internet is also fed with various newspapers, magazines and books, which discuss Islam, its tenets and its teachings from a very hostile outlook. A check might be put on the radio and television. But no check is possible against the misuse of Internet.

Now it is no longer a secret that most Net users are badly affected with the epidemic of the Net misuse. Hit by the gravity of the situation, several Muslim organizations thought seriously of employing the Net to defend Islam against the onslaughts being directed to it on the part of anti-Islam elements and simultaneously provide correct information about Islam to the world at large.

A very important feature of the Internet is that it offers the question-answer facility. Any Net user may

put his question on the Net to seek the answer. And he may get the answer; irrespective of that it is right or wrong.

Given this important feature of the Net, it might be very effectively employed by scientific, academic, educational, religious institutions for a wider circulation of their right ideas and good thoughts. They may exploit this marvelous means of communication for the advantage of the whole Muslim *Ummah*.

Present testing state of affairs has given rise to the practical question: Should the *Ummah* and the Muslim masses be left to their discretion to do as they wish, giving them the doses of admonition and good counsels, or, the counter-measures be taken to contain the epidemic, allowing the use of the Net and other modern means of communication for right purposes and just ends?

Quite obviously, our pious predecessors faced no situation of this type. Admittedly, the harms of the TV, VCR, etc, are extremely great. Yet, we are facing a society, which is unfortunately interested only in these means; it is familiar only with the TV, Internet etc. Even more unfortunately, the system prevalent today is awfully misleading and destructive, caring neither for the good of this world, nor is concerned about the well-being of the *Akhira*. Shall we be right to use these means to save the faith and religion of the Muslims and call the world through these means to the True Religion of Allah?

In the western as well as the Muslim countries

there is a growing demand ot establishing such systems for the dissemination of the Islamic teachings. Undeniably, here might be good-natured people who are not interested in radio or television merely to listen to the melodious sounds of the professional singing women or to amuse themselves with the entertainment programs; they want to seek the solution of their spiritual and moral problems. Should there be the Islamic programs to be broadcast by the radio, television or by other advanced means of communication, such people may arrive at the truth of Islam and its teachings as evidenced by numerous practical examples worldwide. More importantly, the advanced means of communication –computer network, television, video, Internet- are being used to educational purposes on a wider scale so much so that many people think it may dispense with the traditional system of schooling. These means may better be used for the purpose of education throughout the country.

Preceding lines were meant to expose the situation in a boarder way. Given the scenario as above, the following questions need proper answers:

1. What is the position of the *Sharia* on establishing the Muslims' their own radio stations with the sole intention to disseminate Islam and its teachings, and to remove the misgivings about Islamic teachings, to refute the false sects growing from inside the Muslim community; and to put a check on their increasing anti-Islam efforts?

2. As tar as the advanced western countries are concerned, the use of television is rampant there; various movements and organizations are using it to propagate their ideologies and thought. Would it be lawfully permissible for Muslims to establish the television station there?
3. What is the position of the Islamic *Sharia* on preparing audio and videocassettes and other software for the scientific, artistic, moral, educational purposes? The question has assumed extraordinary import today because of the fact that the use and employment of such things is on a constant increase in the world of knowledge.
4. What is the position of the Islamic *Shariah* on employing the Internet or other advanced systems of communication for the propagation of Islamic teachings and of making it available for the purpose?

Unanimous Decisions

After a fuller discussion of the topic and a prolonged debate on most of its aspects, the participants unanimously arrived at the following decisions:

1. The *Ummate Muslima* is committed to make every possible effort for the propagation of the message of Truth and spare no pain in defending Islam against the challenges it faces time and again.
2. Going by the Qur'anic command وأعدوا لهم ما استطعتم من قوة "Against them make preparations to the utmost of your power" (8:60), the use of every sort of means, both conventional and modern advanced, is not just permissible for this important purpose but also strongly recommended in consonance with the demands of the time.
3. The employment of radio system for religious purposes holds no evil, apart from the nature of the employment of radio benefiting from its programs, practical participation in such programs or establishing radio stations of our own.
4. As a highly successful means of communication the Internet occupies special importance. As matter of principle, the legality or otherwise of the employment of the means hinges on the nature of the employment itself. If it is for the right purposes, then there is no bar, if, on the other hand, it is for evil purposes, it shall be unacceptable to the *Shariah*. In case of the legal purposes, it shall have to be deter-

mined whether the achievement ot those purposes is an obligation, commendable or only lawful. The same status shall have to be attached to the use of the means.

Going by the principles put above, all the participants unanimously hold that the employment of the Internet for the religious purposes is permissible, even recommended sometimes. The presentation must be free from all such things and ways unacceptable to the Islamic *Sharia*.

5. Viewed from the angle of the Islamic *Sharia*, the television, which is undoubtedly an advanced, very useful means of communication, carries two inherent problems. Basically, it is a means intended to expose both sound and the image of the speaker to the audience. It is also as much capable to send out the live programs as to videotape it to be broadcast later. The area of first problem is the images exposed to the viewers, although the pictures of the television do not unanimously fall under the category of the images forbidden by the *ahadith*. For, unlike the *ulama* of the subcontinent, many noted men of Islamic learning from among the Arabs hold that the video graphed images don't fall under the forbidden category.

The area of the second problem is the case of its employment in today's world. Despite the fact that the TV is a highly useful means of serving many purposes, it is unfortunately being used mainly for entertainment, to popularize immorality and obscenities under

the pretext ot ottering entertainment programs to the viewers. The movies shown most often on the TV are so immoral and obscene that even the liberal people find it hard to watch them sitting together with their parents or children. A very destructive effect of the most TV programs is that it enchants the children and leaves them less interested in their school activities.

In view of the facts put above, harms of the television far outweigh its benefits. The participants of the seminar take the stand that the use of television for immoral purposes is destructive to the Islamic society in the extreme and advise the Muslims to abstain from it as far as they can.

6. As far as the launching of the channels exclusive for the religious purposes and absolutely free from all sorts of obscenities is concerned, the near total majority of participants holds it lawful. To the following men of Islamic learning, however, the establishment of even such channels is not permissible:
    1. Ml. Abdul Latif of Palanpur
    2. Ml. Abdul Qayyum of Palanpur
    3. Ml. abdul Rahman of Palanpur
    4. Ml. Md. Hamza of Gorakhpur
    5. Ml. Mufti Md. Zaid
    6. Ml. Zubair Ahmad **(of Mazahire Uloom, Saharanpur)**

Other two participants, Ml. Burhanuddin of Sambhal and Ml. Arshad Qasmi Farooqi hold the view that sending out of the live programs is permissible, while the recorded one is not.

Summary of the written views

In response to its questionnaire put in the preceding lines, the Islamic *Fiqh* Academy of India received thirty-six written responses from the *Ulama* belonging to different Islamic institutions and noted seats of Islamic learning. What follows is a summarized version of them.

Establishing radio station for religious purposes

As far as the first question i.e., the establishing of the radio stations for the propagation of the Truth and stemming of the anti-Islam tide is concerned, all the *Ulama* responding to this question are agree, in principle, that the Muslims may establish their own radio stations to propagate the Truth and defend it against the mischief of the misled sects and the anti-Islam forces scattered about the world and very actively engaged in harming Islam, misrepresenting it and its plane teachings to the world on a wider scale. Many *Ulamas*, however, attach conditions. Ml. Burhanuddin of Sambhal, Ml. Yaqub Qasmi of Bara Banki and Ml. Akhtar Imam Adil, for example, are of the opinion that this radio station must be free from all un-Islamic things. Ml. Abdul Latif of Palanpur and Ml. Abdul Qayyum of Palanpur have explained this condition by saying that the radio stations must be run strictly in lines with the Islamic *Sharia*. It must confine itself to

broadcasting only the lawlul programs, advertisements be displayed only the men, abstaining completely from the woman-sun songs, un-Islamic music and all other things unacceptable to the Sharia of Islam. Mufti Habibullah Qasmi is of the view that such a radio station has to be handled and managed only by the Ulama. Maulana Zafrul Islam holds that the news casters should be abstentious and religious minded. Mufti Mahboob Ali Wajeehi and Maulana Akhtar Imam Adil are of the views that the station must be controlled by pious and Good-fearing groups or individuals.

Following is the gist of the arguments for its permission as forwarded by these *Ulama*:

1. Ml. Shafiqur Rahman Nadwi,
2. Ml Riyaz Ahmad Salafi,
3. Qazi Abdul Jalil Qasmi,
4. Ml Abul Qasim,
5. Ml Asjad Nadwi,
6. Mufti Habibullah Qasmi,
7. Ml Abrar Khan Nadwi,
8. Ml Md. Qasim Muzaffarpuri,
9. Ml Rashid Hussain Nadwi,
10. Ml Akhtar Imam Adil
11. Ml Mustafa Qasmi.

- The radio is nothing more than a means and as a matter of principle, it cannot be held absolutely forbidden apart from the purpose of its use.
- Intent, aim and the means in itself is right. Obviously, a station to be established to serve the end

mentioned would naturally be free from play and amusement.

- The Radio is from among the things "which don't constitute a disobedience to the Shariah in themselves.
- According to the juridical principles of the *Sharia* : *all things are essentially lawful, things are attached with the ends they are meant for, if a thing contains no aspect of unlawfulness, it shall be regarded as lawful. The establishment of such a radio station is permissible.*
- The use of the modern advanced means does fall under the general meaning and the broader sense of the many *ayats* of the Holy Qur'an as well as several *ahadith* of the Prophet (SAWS). To quote here only a few of them:

  "Against them make preparations to the utmost of your power" (8:60)

  "Don't overlap Truth with Falsehood". (2:42)

  "To Allah belong all things of the heavens as well of the earth." (3:109)

  "If any one of you can afford to work for the benefit of his brother (in religious sense), he should do so". (Muslim)

  "Deliberate on the creation, and deliberate on the favor of Allah."
- Being the best *Ummah,* the *Ummate Muslima* is committed to work for the moral improvement of the use of modern advanced means, persuading other peoples about the position of Islam vis-à-vis those means and to remove their apprehensions and misunderstandings.

- The Holy Prophet himself adopted various ways for the purpose of Dawah and calling up the people to Islam. To achieve good aims the Fuqaha permit the employing of the articles of amusement and play. Durre Mukhtar reads. "... and from among these things is blowing the trumpet for boasting, and it may be blown for warning and awakening." "The Shami observes:

  "The articles of amusement are not forbidden in themselves. They are forbidden when employed to aim either at the amusement of the hearer or of the person playing it. Of course, with this aspect the relativeness of it is understood as it is evident from the fact that if the trumpet is blown as it is, this act shall be some time regarded as permissible, and impermissible other time according to the intention behind listening to it."[1]

- Haz. Maulana Ashraf Ali Thanawi (may Allah deal him with mercy) regarded the use of gramophone as lawful for the sake of good purposes.[2]

Based on the arguments put above, all the participant *Ulama* gave their unanimous decision on that the establishment of such a radio station would be quite lawful. Many of them, as Ml. Zafar Alam Nadwi and Ml. Abdul Azim Islahi regard it to be a collective obligation of the Ummah. Ml. Burhanuddin of Sambhal and Ml. Zubair Ahmad Qasmi regard such an initiative to be a commendable one.

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[1] Durre Mukhtar vol. 5, p. 247

[2] Imdadul Fatawa vol.4, p. 246

Establishing a TV station

Considering the condition of the western and advanced countries where the Television has become a general thing in the hands of the people, and various movements and outfits employ it there as a very effective tool to popularize their ideas and thoughts, the second question was about the position of the Islamic Sharia as to establishing a TV station or hiring channels for the religious purposes.

There is a disagreement amongst the *Ulama* who have expressed their views in reply to this question. The root of the difference of opinion lies in the images the use of the TV essentially involves.

All the opinions are roughly of two kinds. One permits the use of the TV with images, although the reasons and arguments of the holders of this view are largely different from one another's. To the adherents of this view the establishment of the TV stations for the purposes mentioned in the question is quite permitted.

To the holders of the other opinion, on the other hand, the use of TV with images is impermissible, although from among them there are some *Ulama* who make exceptions to some sorts of images from the general law of prohibition.

Following is a shorter presentation of both the differing views.

Permissibility of the TV with pictures

The men of the Islamic learning who see no

problem with the use of TV with pictures have the following arguments in favour of their viewpoint.

1. Taking into account the problem of the images in detail, Maulana Rashid Husain Nadwi has opined that the general agreement of the Ulama regarding the prohibition of the animal pictures is based on many *ahadith* recorded by the *Sahih* Muslim in the Book of Wearing, apart from that the images are plane or shady. Explaining those *ahadith,* Imam Nawawi (a very noted commentator of the *Sahih* Muslim) writes: "These *ahadith* are unambiguously clear in prohibiting the animate images and this prohibition is of very strong nature .... And this is the stand of the general *Ulama.* [1]

Imam Malik, however, does not subscribe to the view of general prohibition, as we find in the *al-Mausuatul Fiqhia.*

To the majority of the Ulama although the law of prohibition is generally applicable, yet they made some exceptions to the general rule. The exceptions are totally related only to keeping some sorts of images. As for making the images by any way, they make no exception at all.

Going by the Malikite opinion, most Arab *Ulama* hold that all such images which bear no body and the photographs do not fall under the general law of prohibition. To cite a prominent Arab authority here:

"The law of prohibition covers only those sorts of images which have body and bear shade. As for the

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[1] Imam Nawawi on Muslim vol. 2, p. 201

ones without shade like the paintings on the walls, paper, and, similarly, those painted on the clothes, curtains, they are quite permissible. The same is applicable to photographs."[1]

Another great Arab *alim*, Dr. Usuf al Qarzawi, writes:

> "As regards the paintings and the photographs, we have already expressed that the more consistent with the spirit of the Islamic Sharia is the permissibility vis-à-vis such things or un-preferability at most. The permissibility will continue unless the image does not contain a thing in itself which is unlawful to Islam."[2]

Unlike the Arab *Ulama*, the Ulama of the subcontinent follow the majority view of the *Ummah*. They permit the use of the images only under unavoidable conditions, such an exceptional permission fall under the law, *"Hardship attracts ease."* Such conditions include the passport, license, identity cards, etc.

Having given the relevant detail about the position of the *Sharia* vis-à-vis the images, the Maulana has opined that there are three reasons which might justify the establishment of the TV station and the use of images involved.

First, *Dawah*, (calling the people to Islam) and enjoining them what is right and forbidding them what is wrong occupies very high importance in the Islamic scheme of life. And to carry out this important obliga-

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[1] Fiqhus Sunnah vol. 2, p.58

[2] al Halalu wal Haramu fil Islam. P. 14

tion more effectively it is quite advisable to adopt the Malikite opinion. *Dawah* of course is a collective obligation and in the context of the western countries, where the life is too much fast, it is practically very difficult to carry out this obligation in a proper manner without modern communicational approach. Indeed, we had to adopt the Malikite opinion in more occasions than one taking the benefit of the Law of hardship. Since the present situation is very much similar to the earlier ones, there seems no problem in adopting Malikite opinion regarding the issue of images.

Secondly, even the *ulama* clung to the law of absolute prohibition of images make exceptions under unavoidable conditions, as put above under the Law of Necessity. Now if the Law of Necessity is applicable to the cases where the safety of life and property is involved, the safety of religion too must be covered by the same law and the use of TV with images should be allowed. Otherwise, it is feared that a larger number of people will not be covered by our traditional ways of *Dawah*. This of course will constitute a much greater evil than that of the use of TV with images. Under such state of affairs the law of permission must gain preference to that of prohibition, especially when the evil feared to stem from the use of the TV with images has turned lighter because of the Malikites' as well other Arab *Ulama's* disagreement with the law of absolute prohibition.

Thirdly, the Holy Prophet (SAW) has strictly outlawed the use of fire to kill the *Kuffar* or punish the

guilty "Nobody has the right to punish with fire except the Lord of the Fire"[1]. However, in spite of this unambiguous Apostolic injunction the *Fuqaha* allow the Muslims to kill the *kuffar* by fire in the state of war. (For a detailed treatment of the topic the commentaries on the Qur'an, particularly of Shaikh Alusi, and the *Fiqhi* literature may be consulted.)

It needs not to be argued that the media and the means of communication have become highly effective arms of intellectual and cultural warfare of the contemporary world. So, if the earlier *Fuqaha* allowed the use of prohibited things in the face of conventional warfare in the past, why it is considered impermissible to bear some sorts of prohibited items to face the media warfare and stem the tide of evil. Given the facts as above, the enormity of the contemporary challenges is by no way lesser than the former sort of warfare.

Based on the above mentioned three contentions the Maulana permits the initiations of the TV stations. The only condition is that the TV station and its program must be free from all absurdities held unlawful in the sight of Islam.

The same view is shared by Maulana Md. Qasim of Muzaffarpur (Bihar). His view might be paraphrased as that even though the TV functions with images, yet for the sake of the greater religious benefits the image aspect of the TV system should be tolerated as much the same tolerance has already been shown in the cases of necessity as the acquisition of passport and

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[1] Abu Dawood 3/124

the identity cards etc. going by the principle ot accepting the *"lesser haram"*.

Sharing the above view of permissibility, Maulana Mufti Anwar Ali Azmai and Maulana Ishtiyaq Ahmad Azami say that the use of images in the TV programs must remain confined to the minimum and the TV station or channel management shall be required to strictly follow the limits of the *shariah*.

Maulana Uzair Qasmi also shares the above view. He is sure of that when the TV station is to be initiated to absolutely serve the religious purposes then it is quite obvious that its programs shall have no room for absurdities in them and the TV station shall fall under the doctrine of: A thing which does not stand for disobedience in itself. More importantly, the images broadcast are not meant for their own sake. In his opinion, in the absence of the feminine images, the establishment of the TV station is not inconsistent with the general law of the Islamic *Sharia*.

Images of TV mere a reflexion, not the actual ones

Maulana Ataur Rahman Madani has opined that the images shown at the TV are totally different from the ones made by an artist who attempts to build the whole human/animal body and develops the face and thus seeks similarity with Divine attribute of Creating. Such artists and statue makers undoubtedly fall under the threat given to them in many *ahadith* of the Holy Prophet. The TV images are much like those reflecting

on the surtace ot the mirror and contain nothing made by a human being. The only difference between the two sorts is that the photographed image is stored by the electronic camera in the form of the invisible currents and then sends the same to the TV system. Later the same stored currents are displayed on the screen in original form of the photographed person or thing. So, based on the above contention, it will be quite right to benefit from the useful programs displayed on the TV, and it shall be a great and commendable service to establish a TV station for the propagation of Truth and the defense of Islam.

Use of images should be kept limited to the minimum

Maulana Abdul Rashid Qasmi is of the opinion that the display of images on the TV screen has to be kept limited to the minimum, strictly in accordance with the real need. Moreover, the image should be smaller in size, more preferably headless.

The following *Ulama* also share the view of permissibility:

1. Qazi Abdul Jalil,
2. Ml. Riyaz hmad salafi,
3. Dr Qudratullah Baqwi,
4. Mufti Mahboob Ali Wajeehi,
5. Ml. Sultan Ahmad Islahi,
6. Dr Abdul Azim Islahi,
7. Ml. Azizur Rahman
8. Ml. Abu Sufyan Miftahi,

9. Mutti Wasim Ahmad,
10. Ml. Zafar Alam Nadwi,
11. Ml. Khurshid Ahmad Azami,
12. Ml. Asjad Nadwi,
13. Ml. Shafiqur Rahman Nadwi,
14. Mufti Sabahuddin Malik Falahi
15. Ml. Mustafa Qasmi.

All of these men of Islamic learning hold that the establishment of the TV station with the sole object of defending Islam and Islamic teachings and propagate the message of Islam is a right step in the right direction. To some it is even commendable, even a religious obligation. The only provision is that it must be free from the things indisputably forbidden.

The Case of the western world

There are many *Ulama* who hold that the use of the TV and benefiting from its programs is permissible only to the western people, where the case is of 'mass involvement' and for the western Muslims it is too difficult to avoid the use of TV. This view is shared by Mufti Habibullah Qasmi, Ml. Yaqub Qasmi (Zaidpur), Ml. Naim Akhtar and Mufti Jamil Ahmad Naziri. Ml. Naim has further explained that the program must be offered by man only and the program itself should be a religious one. Mufti Jamil Ahmad too has clarified his stand that the permissibility was based on the principle of the *mass involvement,* which attracts relaxation and extenuates the unlawfulness. Difference of opinions of the *Ulama* too is a considerable factor to lighten the force of the negative command.

Opinion holding the use of TV impermissible

Contrary to the opinion of permissibility of the use of TV, there is another opinion which strongly opposes the use of TV even for the sake of religious purposes, on the ground that it in all cases involves the use of images and the *sharia* has strictly disallowed the use of images in any form or made by any way. Making, watching or collecting the images is sternly outlawed. The collection may be tolerable in some cases, but the making of images is absolutely forbidden. Admittedly, there are exceptions to the law of general prohibition. However, the TV and the establishment of its station are not so much necessary as are the cases of exception. Hence unlawful.

This being the gist of those sharing the view of impermissibility. What follows are their arguments they have expounded in support of their standpoint.

Arguing against the view of permissibility of the images, Ml. Akhtar Imam Adil and many other Ulama have cited various ahadith.

> "On the Day of Judgement the most punishworthy shall be the image-makers". Abdullah bin Umar reports the Prophet as saying "Those who make the images shall be subjected to a severe torment. They will be told to infuse life into, whatever you have created." (Bukhari, Book of clothing). Abu Hurairah reported the Prophet to have issued a stern warning in this regard in the following words: "Who could be more wrongful than the one who attempts to create like unto Me. If they are true (in their imi-

tating My creation, they should create a corn or an atom." (Bukhari) Ali reports the Prophet (SAW) as saying: "He who attempts the creation of a thing from among the living beings, he indeed disbelieved whatever has been sent down on Muhammad from Allah."[1]

Explaining these *ahadith*, Hafiz Badruddin Aini writes:

"Our Ulama as well as others hold that the making of the animal image is absolutely outlawed. Making of the animal image constitutes a formidable disobedience to Allah, regardless of that it is made to be trampled on or with any other purpose. For it smacks of seeking similarity with the Divine Attribute of creation, regardless of that it is painted on a cloth, carpet, *dinar*, dirham or even smaller currency items, utensils or wall; and that they bear shade or not. The same view is shared by the majority of the Ulama including Imam Malik, Thori, Abu Hanifa etc. As for the images of inanimate objects like tree etc, they are quite lawful." [2]

Having cited the consensus of all the four schools of Islamic jurisprudence about the absolute prohibition of the image-making, Ml. Akhtar Imam Adil has dispelled the doubts about some outstanding Ulama of the subcontinent. It is believed that Ml. Abul Kalam Azad and Maulana Sayyid Sulaiman Nadwi were not very much against the modern mode of photography. They held that the prohibition of the animal images

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[1] Bulughul Qasd wal Maram p.22

[2] Umdatul Qari vol.22, p. 70, Egyptian print

was only to safeguard the *Ummah* against polytheism.

If the photos are not feared to lead to polytheism, they by no way fall under the law of prohibition. Admittedly, the said *Ulama* held so previously, but it is categorically known that both the above mentioned *Ulama* had shifted to the collective opinion of the *Ummah*.

Maulana Akhtar Imam Adil has provided documentary evidence to prove the shift of both the Ulama from their previous stand. Strengthening his stand, the Maulana further writes:

> "Making of the image, collecting it or seeking enjoyment from it all constitute a gross act of disobedients to Allah. Making images of the animate objects is absolutely unlawful. Nawawi has clearly written that the animal image was strictly outlawed. Allama Shami too has used much similar words to express the same opinion. Only headless images of the animate objects have been held harmless from the Sharia outlook. Actually, the Fuqaha dismiss a headless image as a worthless object rather than treating it as image.
>
> So far as the collecting and storing of very smaller and ungraceful images is concerned, the Fuqaha hold it harmless. However, making even of such images is outlawed. To quote an outstanding authority here: "If the animal figure is on the surface of the pillow, there is no harm in using it, even though the making of it is also disapproved at."[1]

"If the figure is painted on the floor, carpet, small

[1] Khulasatul Fatawa, vol. 1 p.58

pillows, this constitutes no harm as it is trampled on by the feet and is subjected to disgrace."[1]

In the light of the citations put above, Maulana Akhtar Imam Adil holds that the making of animal images is outlawed. Then, quite obviously, watching the images or using them in any way shall be held outlawed. Concluding his arguments, he has arrived at the opinion that the use of TV or establishing its stations is not lawful, even if it is totally free from all absurdities, and un-Islamic act and even if it is managed and overseen by pious and religious persons. For it shall indispensably involve the making and use of animal images and figures which fall under the law of absolute prohibition.

Maulana Burhanudddin (of Sambhal) shares the same opinion. He, however, has allowed the use of such a TV system as which does not involve the animal pictures women workers or other un-Islamic acts. If such a TV system is ever evolved, the Muslim *Ummah* shall be in a position to use the TV for the defense of Islam and its propagation.

Broadcasting Live Programs

There are many *Ulama* who hold the view that the TV programs might be shown live. Such a show of course is very much similar to the reflexion on the mirror. The view is shared by the following ulama:

1. Ml. Burhanuddin of Sambhal
2. Ml. Zubair Ahmad Qasmi

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[1] Badaius Sanae 1/116

3. Ml. Abrar Khan Nadwi
4. Ml. Tanweer Alam Qasmi
5. Ml. Abul Qasim.

Other opinions

Maulana Zafarul Islam and Maulana Abdul Qayyum of Palanpur subscribe to the view that the TV could be used and the Muslims may launch their own TV stations provided the whole system is free from music, women, film, pictures and songs.

Contrariwise, Maulana Abdul Latif has declared it quite unlawful to watch the TV programs or establish Muslims' own TV stations even to purely serve the religious purposes. The main contention of the Maulana is that it in no way could be free from the use of pictures. By launching our own TV stations we not just will be committing a great sin, but also of transiting the sin to hundreds and thousands of people. For the making or keeping the pictures or watching them intentionally is quite unacceptable to the *Shariah* of Islam.

To Maulana Irshad Qasmi the harms of the TV far outnumber its benefits. Far from being mere apprehensions, the harms of the TV now constitute an experienced bitter reality. In fact, he is of the view that the pious and God-fearing people may be permitted to employ the TV for the religious purposes, yet he is not very much optimistic about its feasibility in the present age of moral degeneration.

In view of disagreement amongst the Ulama re-

garding pictures, Maulana Abul Qasim and Maulana Tanweer Alam Qasmi call for a further deliberation on the problem, for it can't be decided unless there evolves a clear-cut view of the men of Islamic erudition regarding the issue of pictures.

In the estimate of Maulana Zubair Ahmad Qasmi and Maulana Akhtar Imam Adil the employment of the TV for the religious purposes has not yet turned to be an unavoidable necessity. Hence there is no reason to indulge in the acts of disobedience without a genuine need.

Preparing Cassettes

So far as the third question i.e., the preparation of the cassettes for the purpose of education, information and moral reform, is concerned, the question has two essential parts. First, preparing audio cassettes which obviously save the sound only. Second, preparing the video cassettes and CDs. As far as the first part is concerned, there is a general agreement among the Ulama as regards the permissibility of such an act. Even some think it to be a commendable step and have strongly recommended for it. The only condition is that it should be free from all absurdities and un-Islamic music.

As regards the second part of the question, there exists a disagreement amongst the Ulama on much the same counts as mentioned under the answers to second question.

There are many Ulama who permit the prepara-

tions ot video cassettes and CDs, taking into account the importance and efficiency of such material. This group includes this group includes the following ulama:

1. Ml. Sultan Ahmad Islahi
2. Mufti Habibullah Qasmi
3. Dr. Qudratullah Baqwi
4. Ml. Riyaz Ahmad Salafi
5. Qazi Abdul Jalil Qasmi
6. Dr. Abdul Azim Islahi
7. Ml. Zafar Alam Nadwi
8. Mufti Mahboob Ali Wajihi
9. Ml. Sabahuddin Malik Falahi
10. Ml. Yaqub Qasmi
11. Ml.Abu Sufyan Miftahi
12. Mufti Azizur Rahman Bijnori.

Maulana Uzair Akhtar Qasmi too shares the same view. To him the video cassette itself is not wrong; its pictures are much like the image appearing on the surface of the mirror which could not be seen outside the machine playing the cassette or CD.

Maulana Rashid Nadwi has adopted the Malikite stand and favoured the view of permissibility of preparing the cassettes for the purposes under question as such material has acquired extraordinary importance and its use is on a constant increase in information technology and other areas of scientific research. Mufti Jamil Ahmad Naziri also shares the same view. He, however, has admitted his inability to properly understand the CD and the related software mechanism.

Contrariwise, there are many Ulama who hold otherwise. Those are the Ulama who disallow the making or use of the pictures. Since the video cassettes and CDs obviously involve the use of the prohibited sort of pictures, it is unacceptable. This view is shared by the following Ulama:

1. Ml. Burhanudin of Sambhal
2. Ml. Irshad Qasmi
3. Ml. Abdul Latif Palanpur
4. Ml. Zubair Ahmad Qasmi
5. Ml. Akhtar Imam Adil
6. Ml. Md. Qasim of Muzaffarpur
7. Ml. Abdul Qayyum of Palanpur

Maulana Zafrul Islam Qasmi, however, sees no problem with the CDs and concerned software.

Using Internet and other advanced means for religious purposes

As regards the fourth and final question of the questionnaire, i.e., employing the Internet and other developed means of information technology to further the cause of Islam and defending it against the tidal waves of the anti-Islam propaganda, the majority of the Ulama holds it quite permissible. The gist of their detailed argumentation is that the adoption of the modern advanced systems of communication and information for the defense of Islam and disseminate its teachings far and wide falls under the meaning and message of the Qur'anic verse:

و أعدوا لهم مااستطعتم من قوة۔

"Against them make ready your strength to the

utmost of your power." (8:60)

Indeed, it constitutes and important portion of the Muslim *Ummah*'s collective duty to use whatever is at its disposal, regardless of that it is conventional or modern and advanced. The only condition is that it must not involve any thing unacceptable to the *Sharia* of Islam. Internet is nothing more than a means of communication and it obviously contains no evil.

The Ulama who hold this view are the following:

1. Ml. Ishtiyaq Ahmad Azami
2. Mufti Anwar Ali Azami
3. Ml. Shafiqur Rahman Nadwi
4. Ml. Ataur Rahman Madani
5. Ml. Abu Sufyan Miftahi
6. Mufti Azizur Rahman Bijnori
7. Dr. Qudratullah Baqwi
8. Ml. Riyaz Ahmad Salafi
9. Mufti Habibullah Qasmi
10. Qazi Abdul Jalil Qasmi
11. Ml. Abrar Khan Nadwi
12. Dr. Abdul Azim Islahi
13. Mufti Wasim Ahmad Qasmi
14. Qari Zafrul Islam
15. Ml. Khursheed Ahmad Azami
16. Ml. Asjad Nadwi
17. Ml. Zafar Alam Nadwi
18. Ml. Sabahuddin Malik Falahi
19. Ml. Yaqub Qasmi
20. Hakim Zillur Rahman
21. Ml. Naim Akhtar Qasmi.

There are some other Ulama who favour the conditional permission of the use of Internet. Mufti Mahboob Ali Wajihi and Maulana Abul Qasim say that if the Internet system is controlled by God-fearing people who employ the only legal method and maintain a complete regard to the Islamic law, its use shall be considered permitted. To Maulana Uzair Qasmi it deems quite admissible as a Muslim, God-fearing management is rightly expected not to indulge in things held unlawful by the *Sharia*.

Maulana Md. Qasim of Muzaffarpur, while admitting to having only insufficient knowledge about the functioning of the Internet system, has opined that it could be employed for religious purposes only on condition that it did not involve any thing unacceptable to the law of God. To Mufti Jamil Ahmad Naziri the use of the Internet is quite permissible. But no comment is possible on any other advanced systems of communication and information unless it comes into full light. To Maulana Rashid Nadwi the use of the Internet is not just permisible but also recommendable, for the work of Dawah constitutes an important part of the Ummah's collective duty. This is if it does not involve the use of pictures. In case it does, the reply shall be the same as to the second questions.

Permission not common

Maulana Zubair Ahmad Qasmi and Maulana Tanweer Alam Qasmi are agree to allow the use of the Internet only for those God-fearing people who feel

themselves obliged to employ this very important means of information only to defend Islam and its teachings and counter the tide of debauchery and obscenity. It, however, can't be allowed for the masses. Otherwise, every home and dwelling will turn into the dens of debauchery and wickedness. The fact that the Sharia may differentiate between the special people and the masses is quite known to the men of the Islamic learning and are scattered about the Fiqhi literature.

Maulana Abdul Rashid Qasmi holds that the Internet can only be used on condition that it restricts the use of pictures to the minimum.

With pictures not allowed

Another point of view is that the Internet can't be allowed if it essentially involves the use of pictures. Without pictures it is of course allowed. This view is adopted by Maulana Abdul Qayyum and Maulana Abdul Latif (both from Palanpur, Gujarat, and India.) Maulana Akhtar Imam Adil has admitted his lack of knowledge of the Internet system. He, however, has expressed his view that, as a matter of rule, the use of the Internet was admissible only if it is free from the animal pictures and other forbidden things.

Presenting the theme

Today the advanced machineries and an unprecedented scientific development have rolled up the distances. The news from one end of the globe may be

circulated to its other farthest ends within shorter a time to be imagined. The means and the instruments have been devised and still being devised and developed are not just for personal use for the day-to-day purposes, they have emerged out to be far too effective means for the propagation of the individual and collective thought and ideologies. Undeniably, in the past too several means were available for the purpose, yet since the modern advanced means are marvelously effective, their use for unjust, negative purposes and base ends has now become a more commoner phenomenon than their employment for just and good purposes and positive ends.

After the radio and the tape recorder, the present era has moved to TV and the Internet. Radio and the TV systems are being used to broadcast the news, to hold countless entertainment programs and to propagate religious thoughts and ideologies. In different countries the State itself sponsors different religious programs according to their own schemes and priorities.

In many countries the radio and TV stations may be hired for these purposes. Even there are countries which grant permission to launch and establish private stations to use for one's own purposes.

Radio and TV apart, the Internet has made the dissemination of the news and the thoughts faster still. The employment of the Internet for the purpose is very easy compared to the radio and TV. Unlike the TV or radio, the Net does not require so large apparatuses to

work. As a person listens to the radio or the TV inside his/her house, so he/she can disseminate his/her thoughts and ideologies to the farthest corners of the globe sitting in a corner of his/her house.

Going by its very nature, the Falsehood is always quick to adopt all such quick-working means to gain currency in less time. Then the situation gets worsened despite repeated warnings: the evil penetrates deep into the masses and the majority of the people gets accustomed to the use of those means. Consequently, they cast deep effects on them, thus damaging their moral values and religious perceptions. Under such circumstances it becomes impossible to fight that evil without the employment and use of the same means and systems.

This all-pervading wickedness can't be ignored anymore, and the remedial steps have to betaken as soon as possible. It is a fact known to all that when the radio and taperecording system gained popularity many Ulama of the outstanding position not just permitted the people to use them and benefit from them, they themselves employed these new inventions and encouraged others on their use. Mufti Md. Shafi, the earlier grand Mufti of Pakistan, wrote an important monograph to deal with the subject in detail. From among the present noted Muftis Mufti Rashid Ahmad of Ludhyana has conditionally permitted the use and watching of the TV.

Given the importance of the topic, the Academy took up the issue and decided to send out a question-

naire regarding various aspects ot it and held a seminar to discuss its pros and cons. As pointed out earlier, the Academy received as many as 34 writings, brief and elaborate.

The list of the writers includes the following well-known names:

1. Mufti Azizur Rahman of Bijinor
2. Ml. Burhanuddin Sambhali
3. Ml. Md. Qasmi (Sapul, Bihar)
4. Ml. Irshad Ahmad (of Gorini)
5. Mufti Mahboob Ali Wajihi (Rampur, U.P.)
6. Mufti Jamil Ahmad Naziri
7. Mufti Anwar Ali
8. Mufti Habibullah Qasmi
9. Ml. Zafarul Islam (Mau, U.P.)
10. Ml. Akhtar Imama Adil
11. Ml. Md. Zubair Qasmi, (Bihar)
12. Ml. Sultan Ahmad Islahi
13. Dr. Abdul Azim Islahi
14. Ml. Ataur Rahman Madani, (Delhi)
15. Ml. Rashid Husain Nadwi (Rai Bareli, U.P.).

Following is a brief summary of the writings the Academy has received in reply to its questionnaire.

All the writings agree, in principle, with the points raised by the questionnaire. In response to the four layer question of the Academy, all the writers have arrived at that the modern means of communication, which unfortunately stand hijacked in the hands of the anti-Islam immoral elements of the human soci-

ety, and are being intensively used to uproot the very concept of morality, have to be used to fight the wickedness and stem the tide of immorality. To fulfil the genuine religious purposes and defend Islamic teachings against the incessant onslaughts directed against Islam on the part of the adherents of Disbelief the use of the modern advance means of communication is very commendable even may turn a religious obligation sometimes.

There are many writers who either refuse to permit the use of TV and the likes or restrict its employment for the religious purposes chiefly on the ground that it involves the making and use of the animal pictures. They, however, have no objection to its use if it is free from animal pictures or employing the women to run its programs. This view is held by Maulana Zubair Ahmad Qasmi, Maulana Akhtar Imam Adil, Maulana Abdul Latif, Maulana Abdul Qayyum (of Palanpur, Gujrat) and Maulana Irshad Ahmad (of Gorini), Maulana Burhanuddin of Sambhal and Mufti Anwar Ali Qasmi, however, are in favour of restricted permission.

It is worth noticing that from among the thirty odd writings three deserve especial mention and attention, i.e., the ones by Maulana Akhtar Imam Adil, Maulana Abrar Khan Nadwi, and Maulana Rashid Hussain Nadwi. While the monograph of Maulana Akhtar Imam Adil deals elaborately with the position of the Islamic *Sharia* on the pictures and picturing, Maulana Akbrar Khan Nadwi and Maulana Rashid

Husain Nadwi have drawn upon some more recent, reliable Arab references. To arrive at a decision more relevant to the modern context Maulana Rashid Hussain Nadwi has elaborately discussed the Malikite standpoint *vis-à-vis* the pictures and picturing, expressing his opinion in favour of benefiting from the relaxation and resilence available with the Malikites in this regard.

The facts of the Islamic Sharia forming the core of the arguments offered by the non-permitters could never be ignored or denied. However, seeing the question in its right perspective, with a proper knowledge of the circumstances which in fact have given rise to it, I express the hope that the non-permitters too will be agreeable to the contingency and allow the use of pictured programs quite in the manner they unanimously agree that the steps be taken to contain the fast deteriorating situation.

Undeniably, the social environment under question is that which is badly engrossed in the use of the TV and the likes, and understands only the language of it. Since the TV serves the purpose of the radio too, most people evince less interest in the use of radio. The people of this environment are given to the use of the TV and the likes and seek the knowledge about the world via the TV only. The reform and reconstructions movement can approach them only through the route of TV. The Muslims and the *Ulamas* now are left with no option other than employing the same means to address such a social environment. The supporters of

the falsehood realized the significance of these means and took lead to employ them to serve their diabolic purposes sowed the seeds of wickedness and environment the whole environment.

Given the situation as above, we are not faced with the question of removing a disobedience with another sort of disobedience or committing a disobedience with good intent, but of containing the evil and checking the deterioration of the environment by taking counter-steps. As regards the picture and picturing, the question is never to bring it in to common use; it is strictly confined to employ the picture and picturing as and when needed in religious, moral and academic programs. In such programs the pictures occupy no content value. Mostly, they fail even to invite attention of the viewers and they seek no pleasure with them.

Much as the prohibition of the use of animal pictures has been a consensual proposition amongst the *Fuqaha* and jurisprudents of the *Ummah* ever since the earlier days of Islam till today, the question which sorts of pictures fall under the law of prohibition is too as old as the proposition itself. A sizable number of the *Ulama*, notably the Malikites, hold that the law of prohibition is only applicable to the type of the pictures existing in the form of the statues. And does not cover the painted images existing on the paper or a cloth. This important point has rightly been raised by some writers, notable Maulana Rashid Husain Nadvi, and calls for a serious attention. We are faced with a situa-

tion in which the realization ot a very important objective lies dependent on the adoption of such a course of action which apparently seems unacceptable to the Sharia. More importantly, the pictures themselves are not intended; what is intended is the content of the program. As far as I see, there seems no wrong if we follow the view of those who permit the use of the painted pictures.

Admittedly, it is the intent which matters. There are numerous precedents of permitting the use of forbidden things. The most recent example of this being the permission of photography under the 'law of necessity', as required for passport etc. We purchase newspapers and books which often have animal pictures and we feel no compunction. It is only because of the fact that we are left with no option other than using those newspapers to know about the world. Although we apparently commit an act of disobedience, yet we are not guilty because we never intend to seek pleasure with those animal pictures. If so, why the same rule may not be applied to the use of pictures for the TV programs?

The Internet is very much similar to radio, phonograph and tape recorders etc. About the video, phonograph etc. we have very insightful notes from Maulana Ashraf Ali Thanawi and Mufti Md. Shafi's writings. Irrespective of their misuse by wrong hands, the Ulama have taken them into consideration *per se*.

TV too is much similar to the phonograph. Both are highly useful. The TV is even more useful. The ex-

cessive misuse of these very good means shall not be a proper point to make it prohibited. What actually matters is the intent behind their use.

Considering the facts and the details put above, there seems no wrong with establishing TV and radio stations and launching channels to serve the purpose of *Dawah* and religious reform. To my opinion, the establishing of our own radio stations, TV channels, provision of Internet facilities and preparation of the cassettes to serve the purposes mentioned in the question is not just admissible, it has indeed become the need of the hour. I would like to conclude my exposition with a very insightful note from Maulana Ashraf Ali Thanawi:

> "If an act of *bd'at* has become the only thing to protect the religion of the Muslims of a place, that act of *bid'at* shall remain in force unless the people of that place are fully reformed. The traditional mode of *Milad Sharif*, for example, is an act of *bid'at*, but the same act of *bid'at* is recommendable and encourageable colleges. The inmates of the college home little access to the ways of knowing about the life and prophethood of Muhammad except the sessions of the *Milad Sharif* often held there. To keeps the college inmates attached with the Islam and the Prophet Muhammad, the programs of the *Milad Sharif* shall have to be ignored by Ulama, notwithstanding the fact that originally it was wrong and unacceptable to the *sharia* of Islam."[1]

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[1] Anfase Isa p.368

Use of Modern systems of Communication For religious Purposes

Ml. Md. Rashid Hussain Nadwi

(From among the thirty six articles the Academy received in reply to its questionnaire, the four have been selected for English translation. These, as pointed out earlier, represent the arguments of both the permitters and the non-permitters. Ed. & Tr.)

Since the question pertains to the use of modern electronic means of communication for serving the religious purposes as *Dawat, Tabligh, Amr bil Maroof* and *Nahi anil Munkar,* it shall be quite in order to preface the answer with the meaning and significance of the duty of Dawah in the Islamic Scheme of things. This way the answer shall become more adjustable and comprehensible.

It is quite known that Allah *ta'ala* has raised the *Ummate Muslima* as an *Ummah* to which the duty of *Dawah* and calling all mankind to Islam is permanently attached. Before the Holy Prophet Muhammad (SAWS) the duty of *Dawah illa llah* constituted the core of the over all assignment of the prophets and they undertook their duty in the best possible manner. The case of the *ummat Muslima,* however, is profoundly different from all the earlier *ummats*. This Apostolic duty has now been shifted to this *ummah* in common, and to the

ulama in particular, because ot the tact that Muhammad (SAWS) is the Final Prophet of Allah and his *Ummah* is the Final *Ummah.*

Here are few Qur'ani *ayats* and *ahadith* of the Holy Prophet which speak well of the importance of the duty of *amr bil maroof* and *nahi anil munkar.*

كنتم خير أمة أخرجت للناس تأمرون بالمعروف و تنهون عن المنكر وتؤمنون بالله

"You are the best of peoples, evolved for mankind. You enjoin what is right and forbid what is wrong and believe in Allah." (3:110)

ولتكن منكم أمة يدعون إلى الخير ويأمرون بالمعروف وينهون عن المنكر ، وأولئك هم المفلحون.

"Let there be out of you a group of you inviting to all that is good, enjoining what is right. And forbidding what is wrong. They are the ones to attain felicity." (3:104)

The character of the believers has been described as:

والمؤمنون والمؤمنات بعضهم أولياء بعض ، يأمرون بالمعروف و ينهون عن المنكر و يقيمون

الصلوٰة ويؤتون الزكاة ويطيعون الله ورسوله .

The believers, men and women, are protectors, one of another: they enjoin what is just, and forbid what is evil: they offer regular prayers, pay Zakaat and obey Allah and His Messengers." (9:71)

Haz Abu Said Khudri reports that he heard the Holy Prophet (SAWS) as saying: "If anyone of you happens to see a disapproved act being committed in his presence he must change it by force, if he can." The Prophet also said once: "He should change it by force. If he can't, he should change it by his tongue. If he is not in the position to express even his verbal disapproval of the situation, he must feel displeased with it

by his heart, and this is the least degree of faith."[1]

Haz Abu Bakar al Siddique (may Allah be pleased with him) is reported to have addressed the people as:

> "O people! You recite the *ayat*:
>
> يا أيها الذين آمنوا عليكم أنفسكم ، لايضركم من ضل إذا اهتديتم
>
> O those who believe! Guard your own souls: if you follow the right guidance, no hurt can come to you from those who stray. (5:105) I heard the Holy Prophet (SAWS) explaining the meaning of this *ayat* as saying: if the people happen to see a sin being committed in their presence and they let it go unhindered, they all are feared to come under an all-including Divine torment."[2]

Of the numerous *ayats* and *ahadith*, the above quoted few ones have been put here just for example. Based on the *ayats* and *ahadith* available around the topic, the Islamic scholars hold that *amr bil maroof* and *nahai anil munkar* falls under the non-all-inclusive religious obligations. To quote an authority here:

> "The Ulama are unanimously agreed on the fact that *amr bil maroof* and *nahi anil munkar* is a duty from among the non-all binding obligations."[3]

How to fulfill this duty?

No particular methodology has been suggested by the Book of Allah, the way of the Prophet, the practices of the Companions or their followers in later gen-

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[1] Muslim. 1/51. Musnad Ahmad. 3/10.

[2] Ibne Majah. Tirmizi. Book of Tafseer.

[3] Ruhul Ma'ani 4/21

erations. It is the principles and basic points which have been laid down by the practice. The aspect of wisdom in exhortation is the most important thing which every *Dai* has always have to before him. The *Dai* is also required to keep the order of importance in mind and address the audience strictly in accordance with their level of understanding. The Qur'an says:

ادع إلى سبيل ربک بالحکمة والموعظة الحسنة وجادلهم بالتی هی أحسن .

> "Invite all to the Way of your Lord with wisdom and beautiful preaching; and argue with them in ways that are best and most gracious." (16:125)

Abdullah bin Abbas reported that dispatching Muaz bin Jabal to Yaman the Holy Prophet (SAW) addressed him:

> "You are going to a people out of the people of the Book. So, when you encounter them, call them to bear witness that there is no god but Allah and that Muhammad is the Messenger of Allah. If they accept this, then inform them that Allah has charged them with five time *namazes* every day and night."[1]

Likewise, dispatching Haz. Muaz and Abu Musa Ashari, the Prophet (SAWS) exhorted them as follows:

> "Make ease and do not make difficult, and air good news and don't cast hate."[2]

The Holy Prophet himself employed varied ways to introduce his Message of Truth to the people. He ascended the mount of Safa, and called the people to Islam, undertook the journey to Taif, shared the assem-

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[1] Bukhari, chap. Maghazi vol. 2 p.623

[2] ibid 622

bties ot the Kuttar, dispatched the detegations ot his companions sent out epistles and letters to emperors around him, to Arab potentates. In short, he adopted all the ways and means available at his time. Going by the same dictate of nature and the Prophet, the *Ulama* have over ages been employing every way of writing and speech to dischange the obligation of *Dawah.*

This establishes well that for the purpose of *Dawah* the Muslims are at liberty to employ every means available. The only condition is that the means should not be wrong in itself. Even more importantly, a particular way or means may be recommended if it is proved to be more useful and more result-oriented.

Establishing Radio station

Following this prefatory note, now I will precisely answer the actual questions. As far as I observed, the radio is no more than a means of communication and dissemination, and could be employed for virtuous as well as evil purposes. The production of the programs involving unlawful and forbidden things, as indecent music and singing, etc. through the radio shall be as much unlawful and *haraam* as when committed without the help of radio. By contrast, if it is employed to produce and disseminate the Islamic programs, calling the people to Islam, dispelling the doubts about Islam and its teachings, presentation of the exemplary lives of the Prophets, companions and pious predecessors and the reconstructive programs meant to warm up the chilled hearts of Muslim youth,

streamline their ideologies, awakening them to the menace of the anti-Islam destructive campaigns and to fight them, there shall be no wrong in it, Rather, such efforts shall be welcomed and commended. For such noble purposes the establishments of the radio station is permitted even recommended.

The *fuqaha* have permitted the use even of the means and instruments of sheer amusement and entertainment if they are employed for virtuous ends. To quote here a notable authority on *Fiqh*:

> "....among from the forbidden things is the blowing of the trumpet for boasting. However, if it is blown for warning and awakening, there shall be no wrong from the *shariah* viewpoint in doing so."1

This detail establishes well that the instruments of entertainment are not unlawful in themselves. It is its use for amusement meant either by the hearer or its player and with this its relationship is under stood well. Don't you see if the some instrument is blown, it shall be lawful some time and unlawful at another time, considering the intention of the hearer and the player. As a matter of principle, the things are governed by their ends.[2]

Explaining the principle *"Things are governed by their ends"*, Ibne Nujaim (the author of the al Ashbah wal Nazair, a comprehensive textbook on the principles of Jurisprudence), has provided many examples of that many acts are governed by their intents. If the in-

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[1] Durre Mukhtar 5/247

[2] Durre Mukhtar and Radde Mukhtar 5/247

tent is good, the act shall be considered lawful, otherwise unlawful. To clarify his point further, he has supplied a citation from another authority, Qazi Khan, "Selling out of treacle to a wine-maker is lawful with the intention of trade. The same act, by contrast, shall be unlawful if the intention is wine making."[1]

Replying to a question in connection with the gramophone, Maulana Ashraf Ali Thanwi has sought to explain the position of the Islamic *shariah* on the means and instruments in a more fundamental way. To quote his words:

> "The position of the *Sharia* vis-à-vis a thing some time is determined in view of the thing itself; and in view of its effects and the ensuing results at other times. This also may vary some time. So, if the entity of the gramophone is taken into account it is not a musical instrument in itself, like the musical instruments it makes no sound by beating or blowing nor does it bear a specific sound. What it bears is the resounding of the voices it receives; much like the resounding of a voice inside the dome. In other words, it is mere a resonance of voices and sounds and nobody describes it to be a musical instrument. Quite obviously, the resonance shall be governed by the original sound. If it is musical in, it shall attract the respective ruling of the *shariah*, and if it is lawful, it shall be regarded unlawful."[2]

The above discussion makes it evident that establishing the radio station to serve the purposes specified

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[1] Al Ashbaah with commentary of Hamui vol. 1. p. 97
[2] Imdadul Fatawa vol. 4 p. 246

in the question shall be right on condition that the forbidden things are strictly avoided. For, the radio is neither an instrument of fun and entertainment nor it is exclusively used to satisfy such base desires.

Based on the preceding detail, I take the view that establishing the radio stations for the objectives specified in the question involves no wrong from the *sharia* viewpoint. Even it may be a duty to establish the radio stations in the areas where the discharging of the duty of *amr bil maroof* and *nahi anil munkar* is not possible but by employing the radio.

To support my stand I would like to cite here the insightful edict (Fatwa) of Maulana Abdul Rahim Lajpuri:

> "Primarily, the radio is intended to cast the news and the speeches. But now it is mostly used for the acts of singing, music and the fun and amusement. Still there is a large number of people who use it to have the knowledge of news, listen to the speeches, statements and similar other lawful things. Therefore, the radio shall not be treated as an instrument of fun and amusement. As regards its misuse, the guilt shall be referred to the committers. Based on this principle, the manufacturing or repair of radio, its sell and purchase with lawful intention, or working in the radio department shall be considered lawful. Even though the more virtuous way is abstention from its use."[1]

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[1] Fatawa Rahimia vol. 6 p. 269

2. Launching TV stations for religious purposes

There is very much similarity between the radio and the TV. They share more than one characteristics. The only fundamental difference between these two means of communication and information is that the TV involves pictures and picture making. What we have to discuss to reply this question is the position of the *Shariah* vis-à-vis pictures and the act of picture-making.

What about pictures?

There are more than one *ahadith* of the Prophet (SAWS) which clearly outlaw the animal picture-making and the use of animal pictures. To quote a few of them here:

> "The people suffering the severest torment on the Day of Judgement shall be the picture-makers."[1]
> Every picture maker shall be condemned to Fire, where life shall be infused into every picture he had made during his worldly life. And these alive pictures shall torment the picture-maker in the Hell."[2]

The Prophet (SAWS) has expressed his extreme disliking of the pictures in the following words: "The angels do not enter a house in which there exists an image."[3]

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[1] Muslim Book of Clothing and Adornment

[2] ibid p. 202

[3] ibid p. 202

Keeping in view such *ahadith* of the Holy Prophet (SAWS), the majority of the *Fuqaha* took a unanimous stand against the animal images and pictures, apart from that the picture is shady or plain, without shade. Imam Nawavi has expressed the unanimous agreement of the *Fuqaha* in the following words:

> "These *ahadith* establish beyond doubt that the animal image is totally unlawful, and the same stand, has been taken by all the ulama."[1]

However, the *al Mausuatul Fiaqhia* (a very important authority on *Fiqh* and Islamic jurisprudence) reports that to Imam Malik the unlawful images are only those which are physical and bear shade. If the animal image is plain, without shade, it shall not fall under the forbidden category of images. To quote the words of the book:

> ".... By contrast, the other viewpoint is of the Malikites and of some others out of the foregoing Ulama, and the same viewpoint is shared by Ibne Hambal from the Hambalites that the pictures unlawful are only those which combine the following provisions in them; first, it must be of an animal, of human being or other animals which bear shade; secondly, it be physical. In case it is plain, it shall not fall under the forbidden category, as painted on wall, paper or on a piece of clothing. The making of such picture or their use is not unlawful; it is just undesireble."[2]

Many Arab *Ulama* have adopted the same view-

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[1] Muslim with commentary of Nawawi, vol. 2. p. 201-202

[2] al-Mausuatul Fiqhia, term 'Tasweer'

point. To quote a recent Arab authority on Islamic jurisprudence here:

> "The preceding detail pertains to the bodily pictures bearing shade. As regards the pictures bearing no shade, like the wall paintings, paper paintings or the pictures painted on clothing, curtains or the photographs, they are not unlawful."[1]

Dr Usuf Qarzawi writes:

> "As for the pictures painted on the boards as well as the photographs, we have already opined that lawfulness is closer to the spirit of the *sharia* or, at best, undesirability, unless the photo itself contains a thing unlawful in Islam."[2]

Excepting the Malikites, there is a general consensus of the *Ulama* to apply unlawfulness both to bodily and un-bodily pictures. However, the Hanafites make some exceptions based on various grounds.

> "The Law of prohibition, shall not be applied to a picture if it is placed underfoot or to be sit on due to its disgracefulness; or it is engraved unclearly on the ring or is too small to recognized its organs by a standing person, or is headless or faceless or misses any organ of crucial import, or the picture is of inanimate being."[3]

> "It is noteworthy that this exception is restricted to the use and keeping them in possession. As for the picture-making, even of this type, it is quite unlaw-

[1] Fiqhus Sunnah vol.2 p.58

[2] al Halal wal Haraam fil Islam p. 114

[3] Durre Mukhtar printed on the footnote of the Radul Mukhtar, vol. 1. pp. 479, 80

ful; indeed it is a sort of seeking similarity with the Creator's most exclusive attribute: the CREATION."[1]

What about photography?

As pointed out above, the Arab *Ulama*, adopting the Maliki viewpoint, hold un-bodily pictures, including the photographs, as lawful. The *ulama* of the subcontinent, however, include the photographs in prohibited category, going by the majority of the *ulama* of the *Ummah*. [2]

However, if a person finds himself under compulsion to have his photograph, for business and other official purposes, he is permitted to do so. In reply to question: "If for going overseas for the purpose of trade, education or any other lawful purpose, the aspirant is required to obtain a passport for which the photograph is indispensable, shall it be right for him to get a photograph of himself?", the late Mufti Kifayatullah wrote:

> "If going abroad is necessary, the making of photograph shall be right, otherwise not."

Replying to another similar question, he wrote:

> "Making picture by pen or by other means is totally unlawful. Pictures are tolerable to the Islamic *Shariah* only under compulsion. And this exception too falls under the law of compulsion, which is an

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[1] ibid

[2] kifayatul mufti (9/234

accepted principle of the Islamic Shariah."[1]

Maulana Khalid Saifullah Rahmani writes:

"Necessity attracts ease." Under the law of necessity the photography shall be tolerable to the Islamic *shariah* for the purposes like passport, identity card, travel documents, identification of the criminals or similar other purposes of national good."[2]

What about the TV Pictures?

The men of learning, as Maulana Khalid Saifullah Rahmani has also expressed, are still divided on whether the pictures appearing on the TV screen are images or the reflection and are lawful or unlawful.[3]

I could not have the opportunity to look into the arguments of those who describe the images on the TV screen to be the reflection. However, deliberation led me to that the people of the view regard such pictures much similar to the mirror which reflects the images of the man only when he faces it. And the reflection disappears as soon as the mirror is removed from the facing position. Is the mirror reflection applicable to the TV screen pictures? It is doubtful whether the machine takes reflection of the person and then relays it to all the TV sets, or the camera work is done prior to relay and then it is sent out to machine which then relays it the TV sets. The first sort of TV programs is quite rare. It is of course the second one which is more popular.

[1] Kifayatul Mufti, 9/244

[2] Halal o Haram p. 229

[3] ibid.

For it is otten seen that programmer are compiled along with the camera work. Even, I think the camera work even of the programs broadcast live is completely done prior to relay. That the live programs too may be replayed, as seen in the case of the sports programs which often are replayed at a slower pace for various purposes, establishes it that the program was prepared prior to its relay.

It is up to the experts to decide whether the program displayed on the TV screen is a reflection or the photographs of the participants. Given the former, the detail mentioned under the radio-related question shall be applicable, that it is totally dependent on the nature of the program itself; if it is right and acceptable to the *shariah*, it shall be permissible. If otherwise, it shall not be permitted. For the former possibility involves no image, it is no more than a reflection which appears on the surface of the mirror and clear liquid items like water, oil etc.

If the latter possibility is admitted, then the images shall be regarded similar to the imaginary pictures which have been explained in the al-Mausuatul Fiqhia as follows:

> "The people used to cut the paper after the shapes of men and, holding those shapes on the rod, move before lamp. This way the shapes reflected on the white screen behind which used to sit the spectators. Thus, the thing the spectators saw actually was the picture of the picture."[1]

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[1] al-Mausuatul Fiqhiya, term "Tasweer".

As tar as 1 think, the case ot the pictures displayed on the cinema or TV screen is very much similar to the imaginary pictures, the only difference is that the imaginary pictures were simpler, but today, thanks to the modern advanced electronic technology, it has become quite possible to improve the older concept and transfer the same to hundreds of thousands screens in the same time. To my humble opinion, the law of prohibition vis-à-vis the imaginary pictures should be applicable to the pictures appearing on the TV screen.

Allama Shami regards the imaginary pictures as unlawful on the ground that it retain the complete picture. The case of cinema is much similar to that of the TV. And it is a known fact that to most *Ulama* among the reasons leading to the unlawfulness of the cinema is also that it involves the use of pictures and images.[1]

However, to my humble opinion, the use and watching of TV and the establishment of the TV station for the sake of the objectives mentioned in the question, might be permissible on three counts.

First, we may adopt the stand of the Malikites vis-à-vis the pictures keeping in view the extraordinary import of *amr bil maroof and nahi anil munkar.* It has already been pointed out that the propagation of the message of Islam at large is a non-all-binding obligation of the *Ummah*. We know that the life in the countries and areas specified in the question is so busy that most people have no time to speak or listen to

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[1] Imdadul Fatawa 4/257 also Jawharul Fiqh 5/148

others beyond their worldly attairs. More importantly, the TV has become there an item of commoner use for the purpose of seeking information from the outside world and has gained phenomenal importance in this regard so much as other ways of information have lost their value as contrasted to the TV. Of course, we have already adopted the Malikite viewpoint going by the *Fiqhi* principle: *hardship attracts ease*. There seems no wrong with adopting the Malikite standpoint yet again keeping in mind the similar Fiqhi principle: *Compulsion has to be removed.*

Secondly: the Ulama, even those who strongly oppose the use of photographs, have allowed the making of photographs for genuine official purposes under the Fiqhi principles like 'the necessity permits the committing of forbidden things, and the *'hardship attracts ease.'* Quite obviously, such exception to the general law of prohibition have been made only in view of that the human necessities are as much related to the religion as to their worldly affairs. To quote an authority here. "Necessary affairs of the people are classified into four categories: religion, life, intellect, honour and property."[1] So, when the photography and the use of photos is permitted for worldly necessities, it should also be allowed for the safety of the religion. Whether we choose to allow the use of photos and picture or disallow it, neither option is free from committing the sin: if the use of picture is allowed, we will be committing a prohibited thing; and if we strictly hold to the

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[1] Ilm Usoolil Fiqh, (Abdul Wahhab Khallaf) p.200

law ol prohibition, it will result in the deprival ot a large section of human beings of the religion of Islam and this, of course, will give rise to a situation of far more harmful consequences. In many areas the obligation of *amr bil maroof and nahi anil munkar* might be rendered impracticable. Given the situation, the option of permission has to be considered preferable. This permission too falls under a very common principle of the Islamic jurisprudence, which says:

> "If out of two evils one is indispensably to be committed, the one lighter in harm shall be committed."[1]

Notably, the application of the law of prohibition carries greater harm, as pointed out above. While the evil of disobedience supposed to be in the permission stands abated as the Malikites and many Arab Ulama have differed from the majorly-held view, the harm resultant from the prohibition is very likely to continue unabated.

Thirdly: The Holy Prophet (SAWS) has clearly disallowed the use of fire to punish the guilty. To quote the words of the Prophet:

> "Nobody is permitted to punish by fire except the Lord of the fire."[2]

Despite this clear prohibitive injunction, the *Fuqaha* have unanimously allowed the use of the firearms while fighting the *kuffar*, even burning them to death. To quote an authority: We shall fight the *kuffar* by the

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[1] al-Ashbaah wal Nazair, with Hamawi commentary 1/286

[2] Abu Dawood

use of catapults, burning them and drowning them."[1]

Explaining the *ayat:*

واعدوا لهم مااستطعتم من قوة .

"Against them make ready your strength to the utmost of your power." (8:60), Allama Alusi writes:

"You know that the target of crushing the fighting *kuffar* can't be achieved by hitting them with arrows. For they employ the guns and cannons to shoot bullets and bombs. If the enemy is not hit by similar deadly weapons, the uncontrollable evil shall engulf all. This situation in mind, it is my opinion, though the actual knowledge rests with Allah, that the Muslim leadership and the defenders of Islam are committed to fight the disbelieving enemy. And the shooting of the bullets and bombs at the enemy is as much an act of excellence and religious merit as shooting the arrows at enemy because of the fact that the former plays the same role in defending the honour of Islam as do the latter ones. As regards the fire these weapons involve, I see no wrong with it. It shall rather be a cause to lead the warrior to Paradise."[2]

It is now a very well known fact that the modern means of communication are perhaps the most effective weapon of the present day world, and obviously indispensable for all those the supporters of Truth who wish to be an active and efficient part of the overall struggle meant for the defense of Truth against the in-

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[1] Radhul Muhtar vol.3 p. 244 print. Darul Uloom Deoband

[2] Ruhul Ma'ani vol.10 p.25

discriminate onslaughts on the part ot the falsehood. So, if the use of some forbidden things may be permitted in the actual battlefield under the law of compulsion, why the field of ideological combat be denied of the employment of some things which normally are outlawed? Undeniably, the enormity and intensity of the ideological combat is by no means lesser than the warfare in the actual battlefield. The intensity of the ideological combat can simply be imagined by the fact that today the media is totally swayed by a few powerful Jews who manipulate it only to serve their mean ends. They might raise a person to heights if he is useful for them and may play a significant role in achieving their narrow objectives; and, on the other hand, degrade to the lowest ebb if they find one harmful and challenging to them.

To cut the long story short, production and the play of the TV programs are not lawful as a matter of fact, as it involves the use of pictures. But, to my opinion, the Malikite viewpoint may be adopted under the 'law of compulsion' in the same manner as the picture and photographs have been permitted for genuine official or other important purposes. As for establishing the TV stations to achieve the ends in question given the importance of the ideological combat, it shall be quite lawful. The only condition is that it should be free from all such things absolutely unlawful.

3. Preparing Cassettes

- As regards the preparation of audio cassettes

tor the objectives mentioned in question, as far as I think, it is quite right, even recommendable. For they are no more than a means of information and communication. The point has already been discussed under No.1. and there seems no need to repeat it here again.

- As regards the video cassettes, since they essentially involve the picture, the preparation of such cassettes shall not be permissible if the stand of the majority of *fuqaha* is adhered to, and may be allowed if the Malikite standpoint is adopted. The urgent and unavoidable *Dawah* requirement in mind, I prefer the Malikite standpoint. Even from Hanafi viewpoint the preparation of video cassettes may be allowed if the 'law of compulsion' is applied to the present situation of the necessity of religious needs, as it has been applied to the use and making of photographs for worldly necessities and genuine official purposes like passport, licenses, etc. and the ideological warfare, which obviously could not be fought without fuller use of the means of mass media, is thought of as much important for the survival of Islam and Muslims as the warfare in the field of actual fighting in which the use of fire and firearms has expressly been allowed by the *Fuqaha*.'
- As far as the CD and similar other software's are concerned, they essentially contain the

material which is written on them. They are equally capable to have simple material as well as pictures. I see no wrong with the preparation or use of such CDs. To my estimate, such CDs have practically put the Islamic thought today on a faster pace and a student and scholar may benefit from the valuable Islamic library in a manner easier than ever before. They can't be outlawed simply on the assumption that they are being excessively used for sinful ends. If this logic is to be applied, we shall have to outlaw many things which the *Ulama* have unanimously allowed, in spite of that they are being used to serve the purposes strongly opposed to the Islamic teachings. If the CD contains the pictures, the detail mentioned under the question No. 2 shall be applicable.

4. Use of Internet for the Propagation of Islam

Like all other means of communication, the Internet too does not exceed to be a means of communications. Since it stands occupied largely by the anti-Islamic forces, it offers most programs and material which is harmful to Islam. That the Internet is being employed for anti-Islam purposes cannot be a sufficient reason to hold it unlawful. We, instead, are required to use it for our virtuous ends and cater to the pursuant to the Truth. Keeping in view the nature of Internet, I see no wrong with the use of it. Even it may

be a recommendably good means and may be adopted as a very efficient tool of sending the message of Islam across the globe. In case it, involves the pictures, which are not essentially associated to this operational system, the detail mentioned under the question No. 2 shall be applicable.

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Using modern means of communication and the stand of *Shariah* vis-à-vis them

Ml. Akhtar Imam Adil

Radio, television, Internet and all other similar things are the advanced means of communication of the present age of science and technology.

Apart from that these means are increasingly being used to seek fun and entertainment, it can't be denied that their invention was primarily meant for communication and information. For this to be blamed is the degeneration of the society and its immoral elements which tend to use even the good things and the products of human invention for destructive purposes. This wrong use must not stop us from using them for right purposes and constructive ends. Wrong use can not render a right thing as unacceptable to the *shariah*. What matters is the right use.

Instruments of fun and entertainment and the *Shariah*

In the *Fiqhi* literature we find some articles and instruments which are often used for fun and entertainment so much so that they were described as the articles and instruments of *fun and play*. About those the *Fiqhi* standpoint is that it is the nature and mode of their use which primarily matters: whereas their right

use is acceptable to the *Sharia*, their wrong use shall be regarded unacceptable. On the articles of *fun and play*, Shami has commented in the following words:

> ".... This suggests that the instrument of fun is not unlawful in itself but because of that it is used for *fun and play*. Don't you see if the same instrument is employed, it might be lawful some time and unlawful at another, differing with the intent. As a matter of rule, the acts and things are judged by their motivating intents."[1]

Explaining the above principle, the same authority writes:

> "From among the unlawful sorts of play and amusement is beating the trumpet vaingloriously. However, if it is beaten to awaken the people or warn them (against a danger) or if it is beaten during three times to remind the people of the angel Israfeel's blowing three times into the Trumpet on the Doomsday, for the trumpet blowing is similar to the Doomsday's Trumpet. So, if one beats the trumpet after the *Asr* Prayer to remind the Doomsday's sounding of Terror and after the *Isha* prayer to remind the blast of death; and in the midnight to remind the sounding of the trumpet for Resurrection, there shall be no wrong with the act of beating it. This argument is equally useful for the listening to the music by the *Sufia* who by their listening to the music, intend the getting of things they know them better than everyone else. One, therefore, must desist from criticizing them, or else one is

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[1] Shami, chap. Hazar and Ibaahah 4/251

bound to deprive oneself from their blessings as they undoubtedly are the virtuous people. The same ruling is applicable to the bugle of the bathrooms. According to the narration of Hasan, *duff* may be played with the intention to make *Nikaah* publicly known, provided it does not tinkles nor makes the sound of the bell or music.

To my opinion, the beating of the drum is also permissible to awaken the people for *sahr* during the month of Ramazan. It is much similar to beating the bugle for bathing."[1]

If the *Fuqaha* did not outlaw the use of such instruments for good purposes as are primarily invented to serve the purposes of fun and play, how it may be right to thinking of declaring unlawful those modern scientific tools and means which have basically been invented for communication and information and publicizing. It is therefore definitely right to employ modern means of communication for right and lawful ends. To draw a final conclusion in this respect, we keep the following fundamental principles in mind:

a. Objectives matter

It is the objectives and ends which have to be considered in connection with all acts and actions. The Holy Prophet (SAWS) has said: "Acts depend on their motivating intentions." The common *Fiqhi* principle: Things are attached with their ends," points to the same doctrine.

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[1] Shami, chap. Hazar and Ibaahah 4/251

b. Consideration of benefit and harm

To arrive at a final conclusion about an act, we must draw a comparison between its merits and demerits and its good and evil aspects. Only then it is to be decided whether to have it or not. It by no means is wise to decide arbitrarily about a given thing to be beneficial or harmful, for there in hardly a harmful thing which is bereft of some specks of good. The Qur'an admits of some benefits even in drinking and gambling and then declares them unlawful, basing it on the principle of comparison. To quote the *ayat*:

يسئلونك عن الخمر والميسر، قل فيهما إثم كبير ومنافع للناس، وإثمهما أكبر من نفعهما.

> "They ask you concerning wine and gambling. Say: "In them is great sin, and some benefit for human beings, but their sin is greater than their benefit."[1]

c. No violation of a *Sharia* rule for a religious expediency

No expediency and good, supposed or actual, is to be preferred to an unconditional obedience to Allah and His Messenger. In the case of a conflict between the two all the expediencies shall have to be sacrificed for the obedience of Allah and His Messenger. Take an example. If somebody collects money by way of unlawful means with a pure intention to spend his total earning to run the institutions of Islamic learning, or some one holds a dancing meeting with the intention to give them the word of exhortation in the end,

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[1] al-Baqarah : 219

all such acts would undoubtedly be decried as the deeds of stark disobedience and a dangerous source of evil.[1]

In no circumstances the sharia allows to compromise on discarding the religious obligations or committing any *haram* for the sake of religious expediencies. Only the *mustahabbaat* and *mubaahaat* might be compromised on for a sure religious good, as the abridgement of the words of *durood* in *Traawih* keeping in mind the tiredness of the people. To quote an authority here:

> "The Imam shall add *durood* to *Tashahhud*. But if the people feel tired, he may end the *salat* with the initial words of *Durood,* leaving out the prayers."[2]

In the same context we might put the Holy Prophet's dropping the idea of rebuilding the structure of the Holy Ka'abah. He actually wished to take the Hateem inside the *Ka'abah* and making two doors lowering the existing *Baabe Kaabah.* The idea was indeed a very good one, but he could not translate it into action for the sake of a greater religious consideration, that is, letting the newly converts to Islam harbor no misgiving about the Prophet and Islam. This point is so important that the Sahih Bukhari has mentioned it in a separate chapter, bringing the same narration to arguably justify the little and the following chapter. Hafiz Ibne Hajar, not able exegete of Bukhari Sharif, has inferred from the above quoted *hadith* that, "The

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[1] Ahsanul Fatawa 6/37

[2] Raddul Mukhtar 1/663

men at the helm are allowed to deal with their subjects expediently, even though the policies are below the desired standards. However, in no circumstances they are permitted to adopt unlawful policies."

It needs not mention that had it been an obligatory requirement to rebuild the Kaabah as the Prophet wished, he would have cared for nothing and carried out the obligation at every cost. For Allah had directed him to entertain fear from none but Allah alone.

It must be taken into account that in relinquishing a desirable or lawful act it is to be considered that it must not lead to a change in the law of *shariah* or interfere with any doctrine of Islam, as holding and treating of a desirable or lawful act to be doctrinally or practically unlawful, or declaring it to be prohibited.[1]

Use of Radio may be permitted, subject to the established rules of *Sharia*

> Subject to the general rules set above, the use of radio may be permitted with a note of caution. That is the programs to be broadcast must be free from the involvement of women, unlawful music and other sorts of immorality. With a conscious consideration to the restrictions set above, the radio may be safely employed for the propagation of Islam and the dissemination of Islamic teachings. Based on this rule, the Muslims are at full liberty to establish their own radio stations to serve the Islamic purposes set out in the questions. Even such an act may be desirable.

[1] Ahsanul Fatawa 6/38

Maulana Mujahidul Islam Qasmi, a well-known jurist of the modern India, has explained this point in a more fundamental way:

"To my humble opinion the radio is just a means of communication, whereby we can sent our message to distant parts of the world. As far as its use for immoral purposes in our age is concerned, it is of course the abuse of this very useful means of communication, and has nothing to do with the means in itself. It can be used ungrudgingly for the purpose of communication and sending out message to others. To use the juridical language, the radio falls under the things which contain no evil in themselves and the evil comes to them from outside. As a matter of principle, the things not essentially evilful might be employed for good purposes without committing a disobedience to Allah and the Messenger or violating any established rule of the Sharia. Basically there is a principle in the Islamic jurisprudence: 'closure of the medium' if it leads to the violation of the *Sharia*, even if the medium itself is free from evil. Likewise, the *Sharia* permits a fuller employment of the means for right purposes. Based on this principle, the employment of the radio facilities for right purposes and virtuous ends shall be considered lawful. However, on the other hand, if this facility is exploited for unlawful ends and to satisfy base desires, this use shall be considered unlawful, even if the radio carries no wrong in itself."

In our age it is an undeniable reality that the electronic media enjoys a commanding lead to affect the masses and the changing the human thought.

There is no reason to stay away from the use of this forceful means for the propagation of Truth. The only condition is that it has to be kept off the evil as far as possible. It is quite imprudent to negate its use altogether. The radio has become the most urgent need of Muslims to acquaint the Muslim masses with the essentials of Islam, propagate the Message of Islam to non-Muslims and the world at large, and acquaint them with the accurate and authentic details of the Holy Prophet's life, of the companions and the virtuous people of Islam.

"To sum up the discussion, (1) religious programs may be broadcast at the radio, (2) the Muslims may establish their own radio stations to effectively achieve the goal of propagating the Message of Islam and defending Islam and to secure the legitimate interests of Islam and Muslims. (3) Recitation of the Qur'an and the publicity of the Qur'anic commentaries and *ahadith* at the radio is quite lawful."[1]

[1] The Quarterly Bahso Nazar, No. 28 vol.7 p.p. 104-6

Using the State-run radio for the recitation of Qur'an and similar other religious programs

The author of the article, Maulana Akhtar Imam Adil, is of the view that it smacks of disrespect towards the religious programs in general and to the act of recitation of the Holy Qur'an in particular at the Sate-run radio which, more often is devoted to indecent entertainment programs. To him it seems too much awkward to place such sacred programs in between the indecent and absurd broadcasts. The author's view seems plausible. However, the argument he has forwarded is self destructive and unfit to the point. The narration he has cited to prove his stand, even if is shared by many luminaries, bears no relevance to the point under discussion. We therefore leave it out. In the light of the detail he has put he tends to disapprove of the idea of broadcasting the Qur'anic and religious programs at the State-run radio amidst the indecent fun and amusement broadcasts. But, in the same breath, he makes it clear that this disapproval is of no more than being undesirable, which shall be tolerable in the face of necessity.

After expounding his argument to prove his personal standpoint of undesirability of broadcasting religious and Qur'anic programs amidst the indecent fun and amusement broadcasts, the author himself has clarified that since there was little possibility of the use of the radio exclusively for religious broadcasts, it would be quite lawful to use the same radio facility for Islamic broadcasts. For under the given cir-

cumstances the necessity far outweighs the undesirability. (Ed. Tr.)

Indeed, today we are facing a very critical situation. All the evil forces and diabolical elements have united against and stand arrayed face to face. On one hand, they are intensively engaged in striding agnosticism, heretic thought, rank philosophies and obscene mythologies, Islam, its scheme of life, and its teachings are being targeted with a ruthless, false insinuating propaganda, thereby to sow the seeds of hypocrisy and intellectual apostasy in the Muslim *ummah* on the other. Under such a threatening situation if we leave this front totally open for our ideological enemy without fighting him with the weapons as forceful and effective as our enemy's, we are bound to lose the war in the ideological battlefield. Consequent upon our defeat indifference to religion even apostasy and hereticism shall gain currency in the Muslim society and the world media, unchallenged by the Islamic media, shall freely project the Muslim *ummah* and its culture as a detestful and abominable object. This is not mere an apprehension, it has now an undeniable reality. We therefore must use the radio for defending Islam and propagating its teachings on a wider scale. Even the Muslims may take steps towards establishing their own radio stations so as to fill the vacuum more effectively. With their own radio stations the Muslims shall be abler to serve their religious ends in a more result oriented way.

2. Use of TV for religious purposes

So far as the TV is concerned, since it inevitably involves the use of pictures which constitutes a repugnant sort of disobedience, it could hardly be permitted to be used or to establish its Muslims exclusive stations for the sheer Islamic purposes, apart from its benefits, and advantages.

Picture and picture making: an unlawful act

Picture-making is an act of brazen disobedience towards Allah and His Messenger. Numerous *ahadith* seek to state the repugnance of this act and threaten the committers with dire consequences in the Hereafter. To paraphrase some notable ones here:

- The Holy Prophet (SAWS) is reported to have said: "On the Day of Judgement the picture-makers shall be subjected to a most grievous torment."[1]
- Abdullah bin Umar reported the Holy Prophet to have said: "Those who make the images shall be tormented; and they shall be asked to give life to their created images."[2]
- Holy Messenger (SAWS) reported Allah to have said: "Who is more wrongful and unjust than the person who pretends to create as I do. For from creating a thing, let Me see is he able of creating a single corn or even of creating an atom."?
- Haz. Ali narrates that the Holy Messenger (SAWS)

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[1] Sahih Bukhari

[2] Ibid

said: "He who made any item out ot these (images), indeed disbelieved what is revealed to Muhammad."[1]

[1] Bulughul Qasd wal Marain p. 22

Unlawfulness of picture and images: a unanimously agreed proposition

The near-total majority of the men of Islamic learning throughout the whole Islamic history, including the great founders of the four schools of Islamic jurisprudence, unanimously maintained that making the image of animate being is extremely unlawful. To quote a notable authority here:

> "It is in the *Tauzeeh* (name of an authoritative book on jurisprudence) that: our *Ulama* and *Fuqaha* as well as others, have explicitly declared that the making of the image of an animal is an act unlawful in the extreme. Doing so is undoubtedly a grave sin from among the deadly ones, irrespective of that they are kept at usually contemptible places, and no matter whether they are painted on clothing, walls or floor, or engraved on hard currency items or utensils and are shady or not. The unlawfulness shall equally be applicable to all the sorts of images. It is because of that the image-making bears semblance with the Divine attribution of Creation.
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> The law of prohibition, however, is not applicable to the images of inanimate objects like trees, fruits, etc. Imam Malik, Sufyan Thori and Imam Abu Hanifa subscribe to the same view."[1]

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[1] Umdatul Qari 22/70

Dispelling misconception about some *ulama*

It is commonly held that some noted luminaries of the subcontinent held a broader and different view about the proposition of images in general and about the modern photography. They held that law of prohibition of images was meant to save the *ummah* from the shades of polytheism. So, in the situations not feared to lead the people to polytheism the images might be used. They had arguments to strengthen their viewpoint. However, equally true is that they disowned their earlier view and returned back to the generally accepted standpoint. The above referred to luminaries were the late Allama Sayyid Sulaiman Nadwi and Maulana Abul Kalam Azaad. They notified the shift in their opinion publicly. To quote the concerned statement of Allama S. Sulaiman Nadwi published in the monthly Ma'arif' of January 1943:

> "In an article, written sometime in 1919, I had expressed my view that there was no wrong to photograph the animate being, particularly of the half body. Following this there appeared many articles by Indian and Egyptian men of Islamic learning, some showing agreement with me and others disagreement. But now, after a close examination of all the concerned aspects of debate, I am agree with the view that the animal photography too is as much unlawful as the hand-made portraits. Photography and the use of photos is permissible only when there is an actual need. Half body, missing the head and face is also permissible. The problem

shall soon be dealt with in detail *inshaa Allah*." [1]

Similar is the case of the late Maulana Abul Kalaam Azaad. For many years he published his historic newspaper, *al-Hilaal*, with photographs and pictures.

Later, while jailed in Ranchi, when some of the Maulana's friends requested him for his photograph to appear at the title of his biography they had compiled, the Maulana rejected their request. To quote his words published in the same biography:

> "It is quite unlawful to photograph, have it or publish it. It was a terrible fault on my part to publish the *al-Hilaal* with pictures and let others draw my picture. Now I feel deeply remorseful of that sin. It is better to conceal my earlier wrong doings, let alone making them public anew."[2]

This parenthetical note was meant to lay it bare that there was a unanimous agreement, at least amongst the *Ulama* of the subcontinent on the unlawfulness of all the sorts of animal images, by way of photography or otherwise. We know that there are many people in India who, encouraged by the so-called difference of opinion of the *Ulama*, have a soft corner about the animal photography. Such people are better advised to keep in mind the above mentioned facts and note again that there existed no actual difference of opinion vis-à-vis the photography in the *Ulama* of the subcontinent.

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[1] Tazkirai Sulaiman p. 146

[2] Jawaharul Fiqh 3/171

Use of pictures in TV: an overview

After the note of clarification regarding an uncompromised unlawfulness of the images, pictures and photography, let's see how many stages there are in the making of the programs which indispensably involve the use of pictures. An overview of the *modus operandi* shall make it clear that there are at least three stages which involve the use of pictures in all TV programs:

1. First of all, the people, things and sceneries face the camera and are filmed, including of animate and inanimate beings and objects. Then are displayed at the TV.
2. The second stage is of storing the prepared pictures either in the TV stations and elsewhere, or they exist continually moving in the TV set when it is operational.
3. The third stage is to get pleasure from looking at them.

Whereas the first stage is primarily concerned with the program makers, the rest two ones are shared equally by the makers and the viewers. All the three stages are regarded by the *Fuqaha* as sort of terrible disobedience. For the sake of ease and clarity, we are going to deal with all the three stages under separate headings.

(i) Picture-Making

As far as the making of pictures is concerned, it

is extremely unlawful with no exception to bigger ones or smaller, clear or unclear, respectable or disgraced. This is a unanimously agreed upon view, as pointed out in the set of the discussion.

To quote a great authority here:

> "Our *Ulama* as well as others hold that the making of images of the animate beings is unlawful in the extreme, and doing so constitutes a formidably great sin; the committer of which is the retained to face a severe punishment in the Hereafter as has occurred in more *ahadith* than one. The law of prohibition shall be applicable to all sorts of animal images apart from that they are of base animals or of the big ones, painted on clothing, floor, sheet, walls, or engraved on hard currency items like dinaar, dirham or paises. This is because this act sounds as sharing the Divine Attribute of Creation. As regards the making of pictures of inanimate objects like the trees, saddles of the animals of burden, there is no wrong with doing so, and unlawfulness is not applicable to it."[1]

Allama Shami writes:

> "The right thing is that the images which do not affect the completeness of *namaaz* may be tolerable. But no sort of picture-making is permissible."[2]

Also unlawful is the making of picture of those inanimate objects which the polytheists and heathen-worship.

However, the *Fuqaha* see no wrong with the ani-

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[1] Nawawi with Muslim 2/199

[2] Raddul Mukhtar 1/677-79

mal images missing the head. Actually, they do not treat it to be the image. Ibne Abbaas is reported to have said: "Image stands for head. The image missing the head is not fit to be termed as image." The same thing has been reported by Imam Tahavi from Haz. Abu Hurairah.[1]

> Ahmad bin *Hajjaj* says, "Once he inquired Abu Abdullah about the image with hands and feet. He replied that the thing with its head is termed to be the picture."[2]

About the headless image Allama Kasaani has expressly stated:

> "There was no problem with offering *namaaz* in clothing with objects which could by no way be termed to be image; it is just a drawing. The point may be argued that the Holy Prophet (SAWS) had removed the face of the bird image engraved on his shield."[3]

To sum up the point discussed above, it is unexceptionally disallowed to make animal images with head, and the expressed threats are primarily related to it

(ii) Storing the pictures in a place

The second stage, as pointed above, is of keeping and storing the images either in one's own possession

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[1] Sharh Ma'aniul Athaar 2/366

[2] Ithaaf al Saadatul Muttaqin 7/59

[3] Badaai Sanaai, chap. Things considered undesirable in Salat 1/116

or moving in the TV set, or as objects of wall and cupboard. In this connection we find some detail in the *Fiqhi* literature. Important points follow:

(a) Small images

An image too small to be seen and recognized its organs by standing person may be kept in house. But it is unlawful even to make such smaller images. The said words offer a very comprehensive definition of the smaller image, although it has been defined in more ways than one. This is the opinion of Halabi. Allama Shami, with reference to Allama Qahistaani, has termed the said decision of the smaller image as the most comprehensive. The author of *Khizanah*, however, is of the view that if the image is the size of the bird, it shall be considered undesirable. If it is smaller than the bird, there is also no problem with it. There are narrations which tell us that some Companions of the Prophet used rings and buttons with small animal images. For example, the gem of Haz. Abu Huraira's ring had the image of two flies. Likewise, Urwa used the buttons with the image of human face, A ring supposed to be of the Prophet Danial was discovered during the era of Umar Farooq. The gem of that rare ring had an engraving with two lions standing right and left and a boy between them. The Khalifa granted that ring to Haz. Abu Musa Ashari.[1]

[1] Jawaharul Fiqh 3/190

(b). Trample images

There is no problem with using the small animal images which usually lie trampled and considered low and disgraced. However, it is not lawful even to make such images.

To quote an authority here:

> "The pillows with animal images can be used though the making even of such images is undesirable."[1]
>
> There is no problem with the use of bedding, carpets, pillows printed with animal images on them, and trampled upon by feet. Such images are tolerable, for they are held in lowness."[2]
>
> Lais bin Saad (may Allah deal him with mercy) is reported to have said: "I entered the house of Haz. Salim b. Abdullah. He was sitting reclining against a pillow printed with bird and beast images. I asked him if it was not undesirable to use such things with animal images. No, the unlawful are those animal images, which lie standing he replied." [3]

With the exception of the above specific conditions it is utterly unlawful to keep and use the animal images.

> "It is not harmful to *namaaz* if the image lies underfoot or behind the *namaazi*. It is, however, undesirable to keep the images in home, because, according to *Hadith*, the angels of mercy do not enter a

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[1] Khulasatul Fatawa 1/58

[2] Bdaius Sanai, Chap. Undesirable things in Salaat 1/116

[3] Musnad Ahmad with al Fathur Rabbani 17/277

house in which there is dog or an image."[1]

Even the *Fuqahaa* hold it undesirable to enter a house the walls of which are printed with animal images or has the curtains thus printed, or is made of the nails and beams printed or engraved with animal images. [2]

(iii) Looking at Images

The third stage of images in the TV programs is seeking pleasure with looking at them. When it is established that the image-making is unlawful, it leads automatically to that the use of images and looking at them is too unlawful. For the latter act is obviously essential to discourage the former one. For example, the drinking of intoxicating beverages is unlawful, and equally unlawful is the use of it for any purpose or looking at it for pleasure.[3]

The Malikite opinion has been cited in the following words:

> "The making of the animal image is unlawful, and it's also unlawful to look at it (without a pressing need), as it is unlawful to looking at unlawful objects."[4]

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[1] Nahrul Faiq (commentary on Kanzuddaqaiq with reference to
 Jawaharul Fiqh 3/240

[2] Jawaharul Fiqh 3/240

[3] Durre Mukhtar, the Book of Drinks with reference to Imdadul Fatawa 4/258

[4] Jawaharul Fiqh 3/239

This brief survey of the opinions of different *Ulama* leads us to that, as far as I think, Islamic *Fiqh* can hardly permit the use of TV and establishing its stations, even solely for the service of Islam, and even if the whole system is managed and overseen by Good-fearing, pious Muslims and involves no absurdity. For the whole working of the TV in no way can be free from the involvement of all the three unlawful sorts of the use of image. The use of animal images is utterly unlawful except in the indispensable circumstances the Fuqaha have specified.

> "It is permissible to use a weapon with animal image, provided there is an actual need to use it for, as a matter of principle, the circumstances of compulsion stand excluded from the general application of the rule, as for example, the eating of the carrion."[1]

Is the TV indispensable for the service of Islam?

The point which needs consideration is: has the use of TV become so indispensable for the service of Islam and the propagation of its message which forces us to permit permanently the use of a unanimously agreed upon unlawful thing? Don not there exist other lawful means which might be a successful substitute of TV to serve the ends of Islam and propagate its message worldwide?

As far as I think, the TV has not yet become our necessity to the point forcing us to commit an ex-

[1] Jawaharul Fiqh 3/232

pressed sin in a systematic way. Exceptions may be acceptable. But the establishment of a systematic department for committing an expressly terrible sin in profoundly different. The use of TV may be permissible only on condition that an actual Islamic State undertakes the complete handling of TV and purges it of all the un-Islamic and immoral acts, its functioning is commanded by men alone, involves no use or making of animal images, is employed for the promotion of truth; and gets the limits and provisions of use decided by the Islamic scholars and Ulama. If so, the TV shall undoubtedly turn a source of good and the Ulama shall withdraw all the objections they have against it today. This also is the view of Mufti Rashid Ahmad of Ludhianawi.[1]

About audio, video cassettes:

As regards making of the cassettes, it shall be lawful to do so provided it involves no animal picture or unlawful music. Despite the usefulness of such cassettes, the expressed unlawfulness of the music and animal picture can not be ignored.

About the Internet

Unfortunately, I have no substantial knowledge about the Net and its functioning. According to the question, it works as both radio and TV do. While its use as TV is unlawful because it involves the animal pictures, it may be employed as radio, keeping it strictly off unlawful things.

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[1] Ahsanul Fatawa p. 8

Shortened version of the answers

1. It is quite permissible, indeed recommendable for Muslims to establish their own radio stations and concerned facilities for Islamic as well as other lawful purposes. The only condition is that it does not involve unlawful things and be supervised by God-fearing, pious people.
2. The television's functioning is predicated on the use of picture which is declared unlawful by Islam. Therefore, in spite of its marvelous performance, its use or establishing its own station shall be regarded unlawful.
3. Audio cassettes may be used, but not the video cassettes.
4. Internet may be used for the good of Islam and the *Ummah* without animal pictures. With animal pictures or other unlawful things it too shall be considered unlawful.

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Using Internet and other modern means of communication for Islamic purposes

By Maulana Md. Abrar Khan Nadwi
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This is the third paper selected for translation. In answering the questions the author has heartily drawn upon the writings, of the contemporary noted Arab men of Islamic learning. The author's way of argumentation is slightly different from those of the first and second papers of this collection, yet his findings are much similar to the first and very much different from the second one. (Ed. & Tr.)

The modern means of information and the systems of communication can't be described as useful are harmful in themselves. Like all other things, the modern advanced means too are vested with the ability to produce good as well as bad results, depending on their way and nature of use. A sharp knife might be used by an expert surgeon to surgically operate a lethal wound and thus may save the life of the patient. The same knife, on the other hand, may be used quite differently by a robber. He may use it to cut the throat of an innocent person. Much as both the different results have been produced by the same knife, yet it is the use who has to be commended or blamed and not the knife itself. The same rule is applicable to the modern advanced means. They may be used for destructive purposes, as it has become a very common phenomenon today. We may also employ them for the construc-

tive purposes. Precisely speaking, the modern means of information are inanimate with no affiliation to either religion, caste or color. So, if the Internet is employed for Islamic purposes: rectification of the religious, moral orientation of the users, to defending Islam and removing the causes of objections and misgivings about Islam sown by its ideological opponents give a correct representation of Islam and its teachings, unveil the harmful effects and destructive nature of the false ideologies, present the Islamic literature and Islamic history in its right perspective and the message of Truth is sent out through those modern advanced means of communication --- doing so shall of course be welcomed and the *sharia* will have no objection against their use as long as the purposes are positive. Today, the adherents of falsehood and the enthusiastic advocates of the all-ingulfing destructive ideologies are actively using those advancement means to serve their object ends and evilful intents. It shall be quite unjustifiable not allow the use of these advanced means for the good of Islam merely for the simple reason that they are the inventions of the anti-Islam West.

Today, they are the universal inheritance and, like all other human beings, we the Muslims have a fuller right to use them for the good of Islam and Muslim *Ummah*. The following juridical principles will explain the *Sharia* standpoint towards these means:

- All things are originally lawful. Unlawful are only those things which have expressly been so

declared. [1]

- The things not expressed unlawful shall be considered lawful.[2]
- Acts are judged according to their motivating ends. [3]

To explain, overeating shall be held unlawful if it is intended to stimulate the sexual desire. But the same act shall be considered very good if one does so to gain strength for fasting or intends to host and feed a guest.

The things having no aspect of disobedience in themselves, but disobedience may occur to it from outside are lawful to use, avoiding the aspect of disobedience.

Put to the above mentioned juristic principles, the use of modern means of communication for Islamic and other lawful purposes shall be regarded lawful.

Modern means of communication and *Ulama*

We can hardly find express decisions in our traditional *Fiqhi* literature in connection with the modern means of communication and information, as our *Fuqaha* did neither witness these means nor faced the related questions. We, however, may draw answers to the concerned modern problems from the general principles of jurisprudence they laid down in the long process of the development and formation of Islamic

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[1] Qawaidul Fiqh p. 59.

[2] Al-Ghayathi p. 490.

3 Ibne Nujaim: al-Ashaah wal Nazair p. 22

jurisprudence. With the scientitic and technological advancement when newer and hitherto unknown means and instruments came into being, means of communication like radio, TV, computer, Internet etc were developed, the *Ulama* and Islamic scholars began to determine the position of the Islamic *Sharia* towards those means and instruments. Keeping in view both their good and bad effects and beneficial and harmful aspects of those means and instruments, the *Ulama* arrived at a unanimous viewpoint that those mean and instruments in themselves are neutral, like the sword which could be employed both for good and bad, positive and negative ends. If it is employed to defend Islam and uphold the truth, it shall of course be an act of great merit. If, on the contrary, it is used to defy the Truth, espouse the cause Wrong, Falsehood, and injustice and to subject others to one's cruelty and tyranny, such a use shall undoubtedly be held unlawful and utterly unacceptable to the *Shariah* of Islam. What actually matters is the nature of use of these instruments and means. It is the nature of their use which is the sole yardstick by which to determine the lawfulness or otherwise of their use. In the following lines the opinions of some noted *Ulama* are being presented.

1. Dr. Usuf al-Qarzawi

(Among the contemporary men of Islamic learning Dr. Usuf al-Qarzawi holds special position. An orator and author of note, he is very well-known for his contemporary as well as extraordinary Islamic knowledge. Ed. Tr.)

Dr. Usuf al-Qarzawi writes:

"Television and radio are like the newspapers and magazines. All these things are instruments and means to achieve some goals and ends. They can't be termed to be good or bad. Likewise, they can't be attributed to be lawful or otherwise. The lawfulness or unlawfulness of their use could only be determined by the ends and objectives for which to use them and the programs which are broadcast and presented through them. In fact they are like the sword, which, in the hand of a *mujahid*, is a very effective weapon, but a means of crime in the hand of a robber and dacoit. Means and instruments, as a matter of principle, are termed to be lawful or otherwise in view of the ends and goals for them they are meant. The TV, radio and print media might prove to be a most efficient means for the moral, spiritual, psychological, intellectual and social development of the society, provided their use is in lines with the Islamic *Shariah*. The same means and instruments may, by contrast, be the highly efficient things to corrupt and rot the society. In short, it is totally up to the nature of the purposes and objectives before the users."[1]

2. Shaikh Muhammad Mutawalli al Sha'arawi's viewpoint

Shaikh Muhammad Mutawalli al Sha'arawi, a well-known Arab man of Islamic learning and well-grounded in Islamic jurisprudence, has expressed his viewpoint as follows:

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[1] Fatawa Muaasara /1/694, (Darul Qalam edition)

"Many of the means and instruments, which Allah *Subhanahu wa ta'ala* has created, can't be attributed to be lawful or unlawful. Take, for example, the knife; we can't term it to be lawful or unlawful in itself. What actually matters is the objective for which to use it. To use another expression, we can't determine the lawfulness or otherwise of a thing without assessing the nature of the man's role in its use. The same principle is applicable to the TV (or radio). We can't term it to be lawful or unlawful. It is the human intention and his role which is to be termed as lawful or unlawful."[1]

3. Shaikh Ahmad Muhammad Assaaf

Shaikh Ahmad Assaaf, a very well-known Arab Islamic scholar, has expressed his opinion about the modern means of information and communication in the following words:

"Television, cinema, radio etc are highly effective means of communication and information. Like all other instruments, their lawfulness or otherwise totally depend on the nature and goals of their use. If the programs to be televised or broadcast are constructive, reformative, consistent with the Islamic norms of life, promote the cause of Islam and unalloyed by moral corruption, depravity, their employment for the purpose shall be held commendable. If these means, on the other hand, are employed to show immoral films and programs to

[1] Fatawa Sheikh Md. Mutawalli Sharawi, (Maktaba al-Qur'an)

arouse sexual feelings leading to moral depravity, crimes, or to propagate apostatical thoughts and ideologies (as we are unfortunately witnessing today), such a type of their employment shall be regarded utterly unlawful, and no Muslim is allowed to watch such programs, participate in them, encourage them or espouse their cause by any way." [1]

4. Shaikh Md. Abdullah al Khatib:

Shaikh Md. Abdullah al-Khatib, also a noted Arab *alim*, has expressed much the same view about the modern scientific means of information:

"Television may be used both for constructive and destructive purposes. The televised items and programs may be useful as well as unlawful and harmful. As far as the useful items are concerned, they may be watched ungrudgingly, like the recitation of the Qur'an, Qur'anic explanation, Islamic cultural programs, and other useful things holding value and benefit for human beings and adding to human ability and intelligence. By contrast, if the programs are destructive involving obscenity, music, free mixing of men and women, base and immoral serials and films which divert man's attention from the real purpose of his life, shall naturally be held unlawful. All the Muslims, men and women, must not indulge in them."[2]

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[1] al-Halalu wal_Haraamu fil Islam by Shaikh Md. Asaaf p. 532. Beirut.

[2] Fatawa Haula al-Din wal Duniya fi Qazaya al-Muslimil Muasir 1/132 Cairo

1. Establishing Radio Stations

Radio is a means of communication which does not involve the use of images and pictures. Today this has become so common that there could hardly be found a home, tea stall, hotel or other points of meeting without a radio set. A farmer carries it with him to his fields, teachers and students have it in hostels and class rooms. In fact the radio has now become an inseparable companion. As far as the use of radio is concerned, it holds no wrong. Radio station may be established to propagate the message of Truth, to defend Islam and foil the anti Islam mischievous plots. Indeed it has become a necessity of the day. The changing circumstances demand that we must possess the same weapons and the propaganda machinery as our ideological enemies do. Failing which we are doomed to lose the war. In the past, when the radio began to gain currency and came into common use, the *Ulama* not just used it for Islamic purposes: to delivering religious reform sermons, recitation of the Qur'an and publicizing the programs of general benefit, but also encouraged the public and incited the people to take part in such programs and listen to them. Today it has become a common phenomenon that the Ulama employ the radio ungrudgingly throughout the world, in both Muslim and secular countries.

2. Establishing the TV station

Television, as it is known, is a charmingly effective instrument. It engages two human senses at the same time. All the members of a family may watch it

sitting together. The programs offered include films, dramas, sports, historical and religious serials. The television has also become so popular. Even in countries like India, where a very large number of population is devoid even of the basic necessities of life like proper food, drinking water, shelter and education, there are more than hundred TV sets per thousand. As far as the western and developed countries are concerned, the use of it even more common there. Even the people are TV allowed to establish their private TV stations. Unfortunately, the TV facility is being largely exploited for negative purposes. The Muslims are required to avail of the permission of launching private TV channels. For this we shall be required to effect substantial changes in the present structure of the nature of the broadcast, thereby adjusting it to our real needs.

Although TV stations may, in principle, be established, yet it must be subject to some conditions. Television may broadcast only the things which are allowed to watch outside the TV screen. As for as the un-Islamic and unlawful things like animal pictures, obscene items, immoral scenes are concerned, they shall remain as much unlawful on TV as they are outside it. It shall be quite unlawful to broadcast on the TV the programs which involve animal pictures, prepared beforehand. The programs involving men and animals may only be televised live as the men or animals thus appearing on the TV screen can't be termed as pictures; they are more like the reflections of the thing fac-

ing the mirror. In short, it is right to watch television programs, use the television for lawful purposes and establish its stations, provided it doesn't involve the things held unlawful by the *Shariah* of Islam.

3. Making cassettes, CDs of moral, educational, artistic, scientific software

As far as the making of the cassettes, CDs of moral, educational, technical, scientific information is concerned, they are quite lawful. As regards the preparation of such cassettes, CDs which are meant to convey the Message of Truth to human beings and defend Islam against the rancorous anti-Islam propaganda, this act has assumed very much importance in the world of today. For the repeated experience has proved their usefulness beyond doubt. Doing so is undoubtedly a very good step towards meeting a long-standing religious need. Such a welcome step deserves encouragement. The cassettes with such software may be used in taperecorders or other modern electronic means.

4. Employing the Internet to publicize Islamic educations

The upshot of the modern information technology, Internet in reality is a world wide web and an international means of communication connected through computers. This is so quick in its working that the user may connect himself with the farthest corner of the globe only within seconds. The inflow of its information is too inundating to stem its tide. Beside

serving the good purposes, it may also be employed for negative purposes, and the user must not overlook its negative aspects. The information available with the Net includes Christianity, Zionism, Hinduism, and all other *isms* except Islam. As far as Islam is concerned, only its Qadyani version is available on the Net.

The Internet is a purely scientific invention, which works quite wonderfully. Being very easy to use, a person may circulate his opinions, ideology beliefs across the world within seconds, sitting in a corner of his home. It is completely up to its user to use it for positive purposes or the negative ones. As far as the *Sharia* standpoint is concerned it shall permit its use for constructive purposes, like the propagations of Islamic teachings, loading it with correct information on Islam, thereby providing others opportunity to know what is right about Islam, remove their misgivings, and come into the fold of Islam wholeheartedly. Outlawed is the use of it for destructive purposes and in things held distasteful by the *Shariah*. In connection with the use of the Net for the introduction of Islam, Dr Isaam Abdul Haleem Hashish, professor Department of Information Technology, The University of Cairo, has made the following discussion:

> "We are required to carefully study the developmental process of the Internet and that in what areas of life we may benefit from its working. Obviously, we may employ it for our many social, religious, environmental, urban and military problems.
>
> As far as the introduction of Islam and Islamic civilization and culture is concerned, we, first of all, must con-

tess the fact that, due to many reasons known and unknown, Islam stands defaced and misunderstood worldwide. It is therefore a common duty of the *ummah* to do its best to introduce Islam and its teachings to the world at large and rectify the generally misunderstood image of it. For this purpose, we have the Internet today, a marvelously effective means. The world will know about Islam only with what we load the Internet. As a result, our religion shall remain intact against the disinformation and the malicious propaganda being done by the media on a worldwide scale. In fact the right kind of information about Islam has to be offered to the world through the Net so that the people may get benefit from it to the maximum. Simultaneously, it has to be kept in mind that the Internet is in use of highly qualified people, and it has now become more important to put the religion of Islam before them in a systematic and scientific manner. Likewise, equally important is to provide them with the right kind of information regarding the world of Islam, its culture, civilization, customs and its people's social behaviour."[1]

Conclusion:

The mounting anti-Islam incursions, undertaken by our cleaver ideological enemy who is employing the most advanced scientific means to harm Islam, have left us with no option other than employing the same lethal weapons of ideological warfare as our enemy is doing.

[1] Hidaya monthly Jaipur.

Using Internet and other modern advanced means to serve religious purposes

By: Maulana Md. Uzair Akhtar Qasmi

Introduction:

Necessity is the mother of invention. According to this natural expression, inventions have always been coming into being when the circumstances forced the people. In the past the needs were far lesser as compared to the present. Hence the past witnessed only fewer inventions. As a rule of nature, there has hardly been an age without newer inventions. The Holy Prophet (SAWS.) too resorted to digging trenches to defend the capital of Islam against a united aggression of the heathen tribes and the Jews of the Arabia, leaving the traditional way of warfare and self-defense. When the art of writing began to progress and the bones, leather and leaves of tree failed to satisfy the growing requirements of writing, paper was invented. When, likewise, the traditionally manufactured candle turned insufficient to remove the growing darkness, more advanced candles were invented. according to the history, the city of Cordova of the Muslim Spain, enjoyed so higher system of light which would lit more than eight mile area around and the people would walk only in that light for miles around.

Likewise, when traditional weapons turned in-

capable of devastating the *kuffar* in the battle fields of jihad, inventions were made and newer items came into being and gained currency into practice. No one dared to reject or belittle their importance merely on the ground that the Islamic *Sharia* does not speak of them at all. The *Ulama* and the experts in Islamic knowledge put them to the standards of the *shariah,* determined its outlook towards them and declared the lawful to use. Even many *Ulama* themselves employed those newer inventions.

Unlike other religions of the world, Islam is a superlatively perfect and lasting religion and simultaneously a system of life. Islam inhenrently possess as such an intrinsic force which guards it against all sorts of social evils and social deviations. By its very nature, Islam welcomes every new invention based on the exploration of the forces of nature. Never it can disallow the use of newer inventions without genuine reasons. The Qur'an declares that all things are the creation of Allah, who has created them for the benefit of human beings. To quote the words of Qur'an:

هو الذى خلق لكم ما فى الأرض جميعا .

"It is He Who has created all things for you that are on the earth."[1]

وما كان عطاء ربک محظورا .

"The bounties of you Lord are not closed."[2]

Based on these and other similar *ayats* of the Qur'an, the *Ulama* of the Shafai school and many from

[1] al-Qur'an 2:29.
[2] al-Qur'an 20:17.

among the Hanatites hold that all things ot the world are lawful to use, except that there are grounds to prove otherwise, even though some Hanafites hold contrary.[1]

The above quoted being the principle of the *Shariah*. Now it is the nature and purpose of the use of these inventions and means which is the sole determinant in so far as its lawfulness or otherwise. While their use for un-Islamic and illicit purposes shall be unlawful, for right purposes it shall be lawful and acceptable to the *Shariah*.

Human creativity will always remain bearing its fruits and newer inventions shall remain coming into being. The common task of the *Ulama* of the *Ummah* is to determine the position of the *Shariah* on them and provide the people with proper guidance in this regard, as and when required, in the light of the established norms of the Law of God. The answers to the questionnaire are based on the same fundamentals.

1. Establishing Muslims' own radio station for the propagation of Islam

If split, the question will go into two parts:

- propagation of the Message of Islam;
- refutation of the false sects and containing their anti-Islam efforts.

[1] al-Ashbaah wal-Nazair p. 115.

So far as the first part, i.e., propagation of the Message of Islam, is concerned, it constitutes a very significant segment of the *ummah's* collective duty, a duty which has always been unanimously agreed proposition one throughout the history. Numerous *ayats* of the Qur'an may be cited to establish it:

وذكر فإن الذكرى تنفع المؤمنين .

"And remind, for reminding benefits the believers." (51:55)

ولتكن منكم أمة يدعون إلى الخير ويامرون بالمعروف وينهون عن

المنكر، واولئك هم المفلحون .

"Let there be out of you a group of people inviting to all that is good, enjoining what is right and forbidding what is wrong; they are he ones to attain felicity ." (3:104).

The Holy Prophet quotes is reported to have said:

"O the human beings! Allah *Ta'ala* has asked t you to enjoin the doing good and forbid the committing of wrong before that you call Him and I turn down your call; and you ask Me and He reject your request; and you implore Him for His help and He reject your petition."[1]

There is another *hadith*, which tells: "

"The one who sees a wrong being committed in his presence must stop it by force; if he is unable for so doing, he must decry it by his tongue. If he is not able even to do so, he must detest it by his heart. The last one is the weakest degree of Faith".[2]

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[1] Ibne Majah.

[2] Muslim.

Besides the *ayats* and the *ahadith* put above, there are more ones which speak of the need of propagating the Truth and checking the increasing evil. They, however, don't speak of the way how to achieve this purpose. There shall be no wrong if we think that the *shariah* didn't specifically prescribe a particular way or method for the purpose. From the last *hadith* we gather that the force may be used for enjoining to doing of right and forbidding the committing of wrong. To explain the connotations of force, Allah *Ta'ala* has honored the human beings with two kinds of force: physical, which includes oration and writing, capacity of intellect, etc., and monetary and the Muslim has been asked to employ all his material means for the cause of Truth and the propagation of the Message of Islam. The Qur'an has asked the Muslims to undertake the *jihad* for the cause of Allah by their wealth and the souls. Propagation of the message of Islam to mankind and meeting the challenges on the part of falsehood (*batil*) is of course a great act of *jihad,* indeed the essence of *Amr bil Maroof* and *Nahi anil Mukar*.

The fact that different ways and varying methods were used in the past and the methods are subject to change according to the requirements of every age is demonstrably proved by the *seerah* and the Islamic history. The Messenger of Allah and the Muslims did resort to more ways and methods than one and each time chose the best effective ones, discarding all those ways and means which the time and experience proved useless or less effective. The *ummah* is charged

with the duty ot propagating Islam and its teachings and defending it against inimical misadventures. The *Shariah* has nothing to do with the ways and methods of the propagation. It will intervene only when the process involves the things held unlawful by Islam or tramples upon limits set by Allah. So, besides the traditional ways and means of propagations, we may employ the most advanced, newer ones to achieve the goal.

Based on this principle, every effective means and instrument, every way and method should be permissible to raise the Word of Allah, propagate the Message of Islam and refute the false sects, and the anti-Islamic campaigns.

Talking in the context of the contemporary age, the radio system is a wonderfully forceful instrument which could be employed to send out the message of Islam across the globe; and it shall undoubtedly permissible for Muslims to establish their own radio stations to facilitate more rapid propagation of the Word of Allah and the message of Islam to all mankind, and counter the anti-Islamic campaign. Our act will be in compliance with the Qur'anic injunctions, like إن عليک إلا البلاغ. "Incumbent on you is only the sending out of the Message of Allah."[1]

إنک لا تهدى من أحببت ولكن الله يهدى من يشاء.

"You can't guide whoever you like, it is Allah Who guides whom He wishes." [2]

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[1] al-Qur'an 42:48.
[2] al-Qur'an 28:56.

Misgivings might strike some minds as to the permissibility of use of radio on the ground that it is commonly used for the purpose of entertainment and base amusement. However, such misgivings might be dispelled by simply thinking deep into the *raison d'etre, modus operandi* and the way of supervision which may easily be understood from the nature of the question itself.

In fact the proposed radio system shall be entirely different from those controlled by the State or by the so-called liberals. The radio system under question will work under the supervision of God-fearing, pious Muslims and its use shall strictly remain limited to lawful purposes only. The permissibility is predicated on the following grounds:

- That things are associated with their objectives is a unanimously held principle of Islamic jurisprudence. The principle shall be applied to all such things and acts as have not expressly declared lawful or otherwise by the *Shariah*. All such things have to be judged by their objectives. If the objectives are acceptable to the *Shariah* of Islam, those things and acts shall be regarded lawful. If otherwise, those things and acts shall be considered unlawful. Putting the radio and related facilities to the same standard, there is no reason to hold its employment impermissible for the Islamic purposes and other lawful ends. Rather, doing so will be a commendably right step in the right direction.

- Another principle of the *Shariah*, though not unanimously agreed, is that all things are essentially permissible unless otherwise is stated by the *Shariah*. The radio system of course falls under this category, and it shall therefore be considered lawful unless it involves any thing held unlawful by the *Shariah*. The radio system indeed has become quite indispensable for the Muslim *Ummah* to employ it for important religious and other purposes, and there is a general consensus amongst the *ulama* of the age as to its lawfulness for the religious as well as generally useful programs. Many credible *ulama* themselves used it and offered religious programs through the established existing radio system. The establishment of Muslims' own radio system not just shall be lawful, but also desirable.

As a matter of rule, anything which is permissible to see and hear by the relative senses may also be seen or heard through the intermediary of an instrument. Likewise, if an act is lawful to be done manually, the same may be carried out by an instrument. The only condition is that the instrument must not involve any aspect of infringement on the Law of God. Based on this principle, the use of radio system is permissible for calling the people to Islam, religious and social reform and to counter the anti-Islam campaign. Keeping in view the usefulness and the marvelous performance of the radio system, the *Ulama* of the subcontinent as well as of the Arab world and other countries of the Is-

lamic world have already declared it permissible. Establishing the personal Muslim exclusive radio stations shall be even desirable and a welcome step.

There is a yet another important point which must not be ignored or overlooked. We the Muslims can't fight our inimical forces with the help of our traditional, outdated weapons. If we are fighting our ideological enemies to win, we shall be required to use the same effective means and instruments as our opponents possess. Otherwise, we are destined to lose the ideological warfare. The radio system constitutes a very significant segment of the modern advanced ideological weaponry. It, therefore, shall be a commendable act on the part of the Muslims to use the radio system for religious purposes and establish their own radio stations to meet the problem more effectively.

More considerably, the present situation is that most radio programs are corrupt and the users, including millions of Muslims, have no option other than listening to such programs or shutting down their radio sets. Now if it occurs that the radio management is owned and supervised by God-fearing, pious persons with noble Islamic thought shall naturally effect drastic changes, into its programs replacing the destructive, corrupt ones by the constructive, useful. Such a change will inevitably suppress the undesirable programs, if not removing them at all. Be that as it may, it seems almost impractical to dissuade millions of Muslims from not using the existing radio system at all. What seems feasible is to effect drastic changes into its

programs. And this is possible only if the pious Muslims have their own radio station. On the face of it, in connection with radio we are faced with two evils of unequal magnitude, and according to the principle of the jurisprudence, we have to choose the lesser one. In view of these facts, it is quite permissible for Muslims to establish their own radio stations on a sound Islamic footing.

2. Use of TV and establishing Muslims' own TV stations

The second question is about to the use the TV and establishing Muslims' own TV stations.

Much as many Ulama include the TV in the instruments of joy and amusement which, in the light of many *ahadith*, have been held unlawful, it occurs to my mind that the said reason is not just enough to absolutely disallow the use of TV.

Although it goes without saying that the TV system is presently serving the purpose of amusement, still it shall be a travesty of prudence and justice to treat it as an absolutely unlawful instrument. The TV is a very advanced equipment of the modern media, which may equally be used for constructive purposes. According to the principles of Islamic jurisprudence the use of TV for constructive purposes should be lawful. Presently, the TV is unfortunately being controlled mostly by anti-Islam, impious persons. Now if it occurs that the Muslims are allowed to establish their own TV stations subject to their own control, and is

employed to further the cause of Islam and defending it against the ever increasing inimical campaign, it shall be quite permissible. For if the reason of unlawfulness if is removed, the law of prohibition shall no longer be applicable to the altered situation, and the use of TV as well as establishing its private Muslim stations shall be permissible.

Even more obviously, the electronic media exerts very great influence on the users. Our ideological opponents are fully exploiting what is at their disposal and using all their means and might to the maximum disadvantage of Islam and Muslims. Under such critical situation if the Muslims let their opponents unchallenged, the situation will worsen beyond repair. The only provision to be considered is that the process must not involve a thing held unlawful by the *Shariah*.

The problem of pictures

The TV undeniably involves the use of pictures. Indeed its whole working is based on the videography. This may be solved by that the pictures, if the videography is treated to be the picture-making, are not meant by themselves; what is actually intended is the program itself and nothing else. So, it has to be abided for the sake of a greater good. A regards the display of obscene pictures, as is the case today, the TV station controlled by God-fearing Muslims is expected to be immune from involving in such immoral acts. This also offers an extra vindication to the permissibility of TV and establishing its private stations.

To conclude, the TV *per se* does not inherently involve an aspect of sinfulness; it comes to it from out side. If the door of evil is tightly shut, there shall remain no wrong to the use of the TV.

3. Preparing the cassettes and CD

The third question pertains to the position of *Shariat* on the preparing of cassettes and CD software. Since this question is an extension of the two earlier questions, the answer to it is not so much different from those of the earlier questions. The gist of the answer is that doing so shall be permissible as long as the process does not violate any established rule of the *Shariah* or involves an act of disobedience to Allah and His Prophet. This answer is predicated on the same principles that have been put before. To summarize them again:

All things are originally lawful unless stated otherwise with respect to a thing or things. Going by the same principle, the making and use of the cassettes or CD software is fully permissible as long as the process is immune from the acts of disobedience of the *Shariah*. The *Ulama* have expressed that the cassettes, CD software, tape recorders have not originally been devised to specifically serve the purpose of amusement and enjoyment, so they may be used for good purposes, even if they are being employed mainly for immoral purposes.

This was a brief statement of the Islamic *Shariah* vis-à-vis the cassettes in general. As regards the video

cassettes and CDs, such items do not contain directly visible pictures or images. The pictures invisibly remain in the CD or cassettes' hardware. Much like the reflection of an object inside the mirror, it appears only when put to the concerned machine. Therefore the presence of pictures in such things can not be considered as a legitimate reason to outlaw the making or use of it for good purposes.

4. The position of the *Sharia* on the use of Internet

The fourth question is related to the use of Internet for religious and other purposes. The Internet, as the question itself puts it, is an advanced means of information like the radio, TV, etc. It is a means like all other ones and has no specific ends to serve. As far as the purpose of the use of Internet is concerned, it is, like in the case of other means, is solely subject to the discretion of the user.

This being so, the use of the Internet is quite permissible for religious as well as all legitimate purposes as long as it does not involve a thing held unlawful by the *Shariah.*

It has to be kept in mind that the Internet is the most advanced, sophisticated, highly effective means of info-communication. For its marvelous performance the anti-Islamic forces are employing it very actively to inflict maximum harm on Islam and the *Ummate Muslima*.

This situation demands that the Muslims should

also employ the same means to detend their religion and its teachings on one hand and to expose the hollowness of disbelief, modern cultural 'values' and false ideologies on the other. We can never fight our highly equipped and ideologically united enemy unless we own the same lethal weapons as do the forces hostile to Islam and its scheme of life.

(The author is a teacher in the Islamic Fiqh at Jamia Qasmia, Balasaath, Sita Madhi, Bihar, (INDIA))

Brief spoken views

Employing Internet, other modern means for religious purposes

By: Maulana Md. Sanaul Huda Qasmi
Madrasa Ahmadia Aba Bakarpur, Veshali, Bihar

(After the four bigger, detailed answers, which comprehensively discuss all aspects of the questions we have selected the following three shorter answers of other Ulama. Like the foregoing detailed answers, shorter ones have carefully been selected to accommodate the diversity of opinions of the Ulama and the men of Islamic learning. (Ed. & Tr.)

Allah *subhanahu wa ta'ala* has endowed man with a limitless creativity. It is this God-gifted creativity which is bringing to light the newer and newer inventions. These inventions are obviously double-edged, and may serve the purpose of virtue as well as of vice. While their use for good and virtuous purposes is commendable and an expression of thankfulness to Allah, their employment for wrong and unjust purposes is a sort of utter ingratitude to Him, an act of mischief bringing disgrace and misfortune to human beings.

The first aspect is that the modern advanced inventions for communication, the radio, tape-recorders, TV system, video, audio cassettes, CD software; Internet, etc. have undoubtedly grasped at the modern so-

ciety and are being exploited to strengthen the cause of evil, obscenity. Nakedism, false ideologies, fallacious thoughts are being promoted and, consequent upon this abominable phenomenon, a God-indifferent society is being built.

Contrary to this, the other aspect of these inventions is that they are the means of securing knowledge and information; and they may equally be employed for the publicity of constructive thoughts, Islamic ideology and the Islamic teachings. They are incredibly effective inventions which may be exploited for the good of Islam. The point which must not be ignored while discussing the *Shariah* position on these modern advanced inventions is that they are not the kind of means originally developed to be the musical instruments as are the violin, cello, piano, etc. The latter kind of instruments is categorically unlawful to invent, use, and their sale and purchase. Unfortunately, the former kind of instruments and scientific means is being employed today largely for enjoyment and amusement, and it smacks of apparent disrespect to use them for Islamic and religious purposes. Although this aspect renders their use for religious purposes unpreferable, yet their usefulness for most urgent educational and reform needs of the Muslim society and dissemination of the correct Islamic ideology and practices vindicates their use and makes it tolerable.

This prefatory talk makes it clear that Muslims are allowed to establish their private radio stations purely to propagate the message of Truth, refute the

false sects, stem the tide of anti-Islam campaign and to use them for other right purposes.

To serve the same purposes the use of TV as well as establishing Muslims' own TV stations shall be permissible, subject to general provisions of the *Shariah*. As regards the TV's involvement of pictures, it has two possible sorts: live telecast, that is, the speaker directly presented to the TV camera and screen. This obviously is almost the same as the reflection of man in water or mirror which is permissible without doubt. The other one is the telecast of pre-made programs. It remains still disputed whether the speaker's appearance on the TV screen is termed to be the picture or mere a reflection. It is known that there are two opposing viewpoints in this regard. While one holds it to be picture and hence impermissible, the other regards it mere a reflection and hence permissible. As far as I think, the latter one is more proper, keeping in view the necessity of the circumstances.

For the educational, academic, technical, moral purposes the making of the cassettes, CD software etc. shall be regarded lawful, and keeping in view their usefulness, it shall also be permissible to use such things for the promotion of good.

The Internet and similar other advanced systems may be employed for the publicity of the Islamic teachings. It will indeed be a right step in the right direction which is expected to enlighten the masses with the true Islamic teachings.

Important warning

Using the double-edged modern advanced means of communication for Islamic purposes is an act delicate in the extreme. It needs to be carried out with utmost care and an acute sense of God-fearingness. Otherwise, persons lacking in the religious sensitivity may wrongly avail of the conditional permissibility of the use of these means, turning them into the instruments of joy and amusement Apprehensions apart, the importance of the act requires immediate initiation, even if for experimentation.

Using Internet and other modern advanced means for religious purposes

By: Mufti Nasim Ahmad Qasmi

Introduction:

Islam is a universal religion, a set of teachings usefully practicable in all times and climes. It possesses so comprehensive principles and laws as to provide proper solutions to all diversely emerging problems. To provide proper guidance to Muslim masses constitutes the task of the jurisprudents and the men of Islamic learning. Islamic jurisprudence is vast enough, with its doors always open for new thoughts, further deliberation, interpretation. Islamic jurisprudence stands for a lasting and dynamic law. The Holy Qur'an has accorded very high import to the *Tafaqquh fi al-din*. To quote the words of the Quran:

فلولا نفر من كل فرقة منهم طائفة ليتفقهوا في الدين ولينذروا قومهم إذا رجعوا إليهم.

> "Why a contingent from every expedition didn't go forth to devote themselves to studies in religion and admonish the people when the return to them."(S.9: 122)

The Prophet (SAWS) has expressed his appreciation of the *tafaqquh* in the following words:

من يرد الله به خيرا يفقهه في الدين .(الحديث)

> "The man with whom Allah wants good grants him a deeper understanding of the religion (of Islam)."

Ever since the very time of the Holy Prophet (SAWS.) till today the men of Islamic learning, Islamic jurisprudents and the *Ulama* have always been doing their job of guiding the *Ummah* as and when it faced newer problems. They successfully applied the Islamic jurisprudence and its vast wealth of principles to solve the rising issues and meet newer challenges. Hundred of such problems have been dealt with and this department of the Islamic jurisprudence is termed as *Fiqhunn Nawazil* (jurisprudence of emerging problems).

In the past, when the *Ummah* was confronted with Greek mythology and philosophy, renowned *Ulama* rose to the occasion, developed the *ilmul kalam* on the pattern and style of the Greek philosophy, and served a very urgent purpose. Present age is of scientific discoveries and advancements. The development of science and technology in every sphere of life has given rise to many newer issues which were quite unconceiveable in the earlier age of the formation and development of the Islamic *Fiqh*. This entirely changed situation dictates that the *Ulama* and the Muslim jurisprudents apply themselves to find solutions to modern problems and issues in the light of the Islamic jurisprudence.

Are the Muslims allowed to establish their own radio, TV stations?

Radio and TV are modern, advanced means of communication which may equally be employed both for right as well as wrong purposes. The ruling of the

Shariah can't be related to the means themselves; rather to the nature and purpose of their use. Thus, if they are employed for religious or for general good purposes without indulging in un-Islamic acts and obscenities, this use shall be considered right as, for example, the recitation of the Qur'an, versed admiration of the Holy Prophet (*Na'at*) and the general teachings of Islam for the purpose of exhortation. If, on the contrary, these means and instruments are used for wrong, un-Islamic purposes, their use shall be regarded unlawful.

If a Muslim group is interested in establishing its own radio/TV stations, with complete hold of its own over it, and wants to use it exclusively for lawful, Islamic purposes and to serve other wider objectives of the Islamic Dawah, such a move shall of course be permissible. Rather, the present situation when the media is occupied largely by non-Muslim nations hostile to Islam which are using these advanced means for a malignant propaganda against Islam and its noble teachings obliges us to own such means and facilities and establish our own stations to use these modern facilities to propagate Islam, Islamic teachings and religious learning in an organized and effective way.

Discussing the position of the Islamic *shariah* on the modern means, the late Mufti Md. Shafi (of Pakistan) has classified all such means into three categories. To quote him:

- Those means and instruments which are devised only for unlawful and un-Islamic acts, like the traditional and modern musical instruments. Such instruments are unlawful altogether, their invention,

manufacturing, trade and use, etc.

- Those inventions which inherently are capable of being employed for lawful as well as for unlawful purposes, as for example the war equipments. They obviously may be used as much for the support of Islam as against it. Equipments of communication--telephone, wireless, etc. and the means of transportation, motor car, plane, copter, etc. fall under this category. Such things may be invented and their trade is also lawful as long as the motivation is right and positive. Their use is permissible for lawful purposes and impermissible for unlawful ones.
- Those instruments which mainly are used for amusement and play and similar other unlawful acts even though they may be used for lawful purposes. Gramophone (now called record player) etc. belong to this third category. The use of such instruments is obviously unlawful for wrong purposes, their use for good purposes is not fully proper. For, it smacks of disrespect to use such things for listening to the Qur'anic records, even though listening to the Qur'an is an act of virtue and fetches great reward."[1]

Discussing the position of the *shariah* on the use of radio, the late Mufti himself writes:

"Although the radio is being largely employed for broadcasting and listening to immoral songs and other unlawful things, yet its use for listening to the news and similar other purposes is not less important. The radio, therefore, belongs to the second category. Its use for right purposes is right and for

[1] Aalaate Jadida ke Shar'ai Ahkaam, p. 15,16

unlawful purposes shall be disallowed. Its manufacturing and trade is lawful as long as the intention is right, even though the second party employs it unlawfully.[1]

Position of *Shariah* on the use of Internet:

Internet is a modern advanced means which has been developed to enlarge and strengthen the communication system. Through it any piece of information may very easily be publicized. That is why it is gaining currency very fast not just in the western advanced countries but in countries like India as well. Since it is the most recent invention, the traditional *Fiqhi* literature makes no mention of it. In the light of the general principles of Islamic jurisprudence, however, the position of the *shariah* on it could be determined.

As a matter of principle, since the means and instruments are not meant for their own sake, the legal ruling on them could not be given as such. The legal ruling pertains only to the nature and purpose of their use. Their use for lawful purposes will be acceptable to *Shariah* as long as the process does not involve unlawful acts. Likewise, their use for un-Islamic purposes shall be considered unlawful.

As far as I think, the Internet or similar other advanced systems may be used for the propagation of Islam and Islamic teachings as well as for other lawful purposes so long as it does not involve anything wrong, unacceptable to the nature of the *Sharia* of Islam.

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[1] Aalaate Jadida ke Shar'ai Ahkaam, p.17

Using Internet and other modern means for religious purposes

By: Dr. Abdul Azim Islahi
Depart of Economics, Aligarh Muslim University, Aligarh

Introductions:

Ever since the very first age of the Islamic history, all the available means of communication have been in application for the purpose of propagation of Islam and Islamic teachings. Exhibition of eloquence, oratorial and poetical skills at the market of Ukaaz, entering into mutual contention and imprecation with the peoples of other religions and giving good counsels to the general Muslim masses offer the best practical examples of this application. When the changed circumstances forced the Muslims to employ the swords and spearheads for the defense of Islam, the *Ummah* withstood the challenge. Likewise, when Islam came under the intellectual invasion of the Greek philosophy, the Islamic scholars rose to the occasion and faced the challenge successfully by learning the invader philosophy. But when the spirit of resistance and confrontation began to waver and the new knowledge and thoughts began to be treated as prohibited things; and we withdrew ourselves from competing with the inimical rival nations, the natural result was that we were cast out from the field of competition.

Applying the God-gifted reason, the disbelieving

people invented marvelous things. The use of such things to serve the anti-Islamic purposes should not be very much surprising to us. Our passive attitude towards the advanced inventions like the laud speaker, radio, television, Internet etc. had brought shame to us in the past, and the same is feared to occur in the future, if we continue to think along the old lines, shutting our eyes to the new and changed challenges of life. We can never withstand the impending cataclysm by covering our faces under the dust, as it to be known as the practice of ostrich.

The situation demands us to initiate action. The invention and development of the Internet has transformed whole the world into a village rather a room. We can not flee from its effects in spite of our evasive efforts. The changed situation has left us with no option other than facing the threat itself, benefiting from its merits and evading its bad effects and enjoining the same on others.

After this introductory talk, the answers to the questionnaire are as follows:

1. It is a non-all binding obligation of the Muslims to establish their own radio stations so as to propagate the message of Islam refute the false sects and to counter the anti-Islamic campaign.
2. To achieve the objectives mentioned in the question it will not only be permissible to establish Muslim's own TV stations, but also it has now become a duty that cannot be deferred any more.
3. with a view to facilitate more rapid access to Islamic

teachings, moral, educational, scientitic, technological information and also to preserve and widely circulate the Islamic heritage, it has become very important to make cassettes, audio, video CDs and software. Opposing such a move or ignoring it any more is feared to attract Divine displeasure in the Hereafter.

4. employing the Internet or similar other advanced systems to give a wider circulation to Islamic teachings and making efforts in this regard falls under the general demand of the *ayat* وأعدوا لهم مااستطعتم من قوة .

"Against them make ready your strength to the utmost of your power." (8:60)

Furthermore, today we stand in earnest need to incorporate the advanced information technology into the curriculum of our Madrasas and the seats of religious learning, as did our foregoing *Ulama* in the past and introduced the logic and philosophy to their courses of studies, thereby to counter the invading Greek mythological paganism.

Written views

Using Internet and other advanced means of information for religious purposes

By: Maulana. Abdul Qayyum Qasmi Palanpur
Jamia Naziria, Kakosi, Gujarat (INDIA)

(Besides detailed and shorter answers to the questionnaire, the Academy received over a dozen brief written views of the Ulama from across the country. For this anthology, three have been selected to represent the group. Present writing in the first one of the group. (Ed. Tr.)

1. For the propagation of Islam and Islamic teachings, to refute the false sects and ideologies and to befittingly face the inimical challenges the Muslims are permitted to establish their own radio stations and other concerned facilities. The only condition is that the radio programs should be in lines with the Islamic laws and the working staff should possibly comprise the men only. The news and other information material be right and true. Moreover, whole the operational scheme of the radio must not involve the female voice, songs, music and all the absurdities of the kind.
2. To serve the same purposes as specified above, the TV stations may be established in western, ad-

vanced countries on condition that the operational scheme does not involve unlawful and un-Islamic acts as music and women. It should meet its expenses only through lawful resources. Likewise, it must not involve the making of animal pictures, the programs, serials, news should be factual and not fictional, based on lie and untruthful matters.

3. Preparation of cassettes, CDs and software to promote moral educational, scientific, technological information shall also be permissible, provided it does not involve the animal pictures.
4. For the propagation of Truth and to give a wider circulation to Islamic teachings it shall be quite lawful to arrange the Internet system, on provision that it involves no animal pictures and is free from all absurdities.

Employing Internet and other advanced systems for religious purposes

By: Maulana Sultan Ahmad Islahi, Aligarh

1. For the propagation of Islam, refutation of the false sects and to counter the evil ideologies, the Muslims are under obligation to launch their own radio system and concerned facilities as and when required. The Muslims of such countries and regions where the need for such an arrangement is felt more acutely are obliged to make arrangements for such facilities. The Muslims living outside such countries are also asked to evince due interest in it and do their best in this regard, thereby taking part in the overall reform work.
2. There is hardly a country in the world where the TV is not in common use today. To achieve the aims and objectives specified in the question the arrangement of TV and establishing its stations has now become a duty of the Muslim community, far too ahead of permissibility.
3. Preparation and making of the cassettes, CDs and software to achieve the educational, moral reform objectives is not just permissible, but also constitutes a part of the *ummah's* task of propagation of Islam and Islamic teachings.
4. In the light of the premises set above, the arrange-

ment ot Internet and other similar advanced systems, with a view to propagate Islam and give a wider circulation to Islamic teachings, has now become a duty of the *Ummah.* Muslim *Ulama* and the masses are all required to wake up to the occasion and leave no stone unturned for the good of Islam.

Employing Internet and other advanced means for religious purposes

Dr. S. Qudratullah Baqwi
(Mysore, Karnataka)

With a view to counter the anti-Islamic campaign orchestrated by false sects and malicious elements, the Muslims may establish their own radio stations. Such a move has even grabbed extra import today. The international and national Muslim organizations, like the Makkah-based World League of Islamic Countries, Islamic Development Bank, should take appropriate steps in this regard.

The Holy Prophet (SAWS) employed the tool of poetry itself to repel the malignant poetry. He encouraged the Muslim poet and permitted to use the pulpit of his sacred *masjid* for the purpose and rewarded the poet with his mantle. Likewise, he not just permitted his Companions to dig the trenches, a conventional practice of the Iranian heathen Magus, to face the united enemy, but also he himself took active part in the act. The Holy Prophet's adoption of a practice of the heathen people speaks well of that the Muslims are permitted, rather encouraged to use the available means to further the cause of Islam and defend the Islamic teachings against the malicious propaganda. Resourceful Arab and other Islamic countries should leave no stone unturned to establishing their own ra-

dio and TV stations. Even they should launch their own independent satellite and establish spatial stations.

Many research institutions are at work today to facilitate access of general people to possible educational, academic, technological materials. For this purpose, audio, video cassettes, CDs and software may be prepared. Indeed such a move has now become the need of the hour. To safeguard the new generation against the moral and ideological perversion is of course a non-all-binding obligation of the *Ummah*. Moreover, a group of the enthusiastic people has to be prepared to make concerted efforts in this direction.

For the promotion of the religious cause, and also to seek the knowledge of the modern scientific thoughts and researches the Internet and other advanced systems may be adopted. Islam is never opposed to knowledge and science; it ardently espouses the cause of knowledge instead. Teaching of the Book and Wisdom constituted the essential part of the Prophet's mission.

Group discussion

On
The use of Internet and other modern systems of communication

With a view to facilitate the exchange of the views between the participant Ulama and scholars, a group discussion was arranged so that the discussants may express their opinions, cautions and reservations in an open environment. The discussion was preceded by a useful, informative talk of Mr. Tariq Sajjad, who introduced the Net, shedding light on various aspects, advantages and disadvantages of it. (Ed. & Tr.)

Mr. Tariq Sajjad introduces the Internet system:

From among numerous facilities made available to us by the Internet the following ones are specially notable.

- You can open and read any book available on the Net and can take printout of its pages as you wish.
- E-commerce: you perhaps are aware of the concept of electronic commerce. You may visit any shop of your choice available on the Net with its details and choose the items of your choice. To purchase any item, get yourself registered online and give the number of your credit card (if there is any). The price of the

item shall be deducted trom your bank account and within days the item shall be delivered at your home. Thus, this facility dispenses you with visiting the shop in person. Now you are able to make any sort of purchasing without stepping out of the house.

- The World Wide Web, likewise, has enabled you gather information of any type. For instance, you can easily trace out any missing person through the help of the Net. I would like to cite here an example of the sort I myself have experienced. Dr. Md. Idrees was my teacher at Aligarh Muslim University Aligarh. For some time he moved to Malaysia, where he joined the University of Petroleum and Naturals as lecturer. I often exchanged correspondence with him. Then, the correspondence discontinued abruptly. It embarrassed me a lot. I had no option other than making recourse to the search engine. The search engine is a program meant for searching the Net for any type of information about any area of knowledge. The search engine has a subunit called 'people search', which helps the finder trace out any missing person by his/her name. I entered the name of his university in the people search, which began to offer all the details of that university to my PC. Then I visited his department, say, Chemical Engineering. To my surprise, I found his name there

as: Dr. Md. Idrees lecturer. Then I e-mailed to the Web master (the in-charge of all the information available with a website) to provide me with further detail about Dr. Md. Idrees, who works in the university as lecturer. Next day. I received the e-mail reply: "you are right; he was here as lecturer. But he returned back to India six months ago."

What I want to simply put is that the Internet offers various facilities. Some more important ones are the following:

- You now are able to download many types of softwares.
- For example, I wanted to have the *Azaan* (i.e., its special tone) called out in the Holy ka'abah; and I received it through the efforts of one of my friends via the Net. Then I myself had the opportunity to hear the *Azaan* of the *Masjide Nabawi* (the Prophet's *masjid* in Madina). In short, this facility too is available on the Net.
- Another popular facility available on the Net is the Internet Relax Chat. To explain it, suppose you are here in India and a friend or a relative of yours is in America, Canada or anywhere in the world; if you have fixed a time with him beforehand and both he and you get connected with your personal computers, you will be able to chat with him leisurely. His message will appear on the up screen while yours shall be seen on the down side of the screen.
- Internet phone is a yet another feat. This system en-

ables the user talk to anyone else connected with the Net on the other end and having the facility of the Multimedia personal computer (an advanced instrument capable of presenting the voice, text and the picture of the speaker). For the Internet phone facility you will have to bear only the local call expenses even though you had the STD and ISD calls. In India the Internet phone system is not yet allowed. Yet the time is not far when it will gain currency.

- Internet fax system is also available. By a fax machine you can send your message to another destination by the Internet. In addition to all such unprecedented facilities, we have FTP (file transfer protocol) facility as well. Through this facility you can exchange or send the larger files to any person anywhere in the world.

(Then Ml. Ubaidullah As'adi put forward the theme of the discussion.)

Ml. Atiq Ahmad of Basti

The theme of the debate has been put before you and also we have learnt, at least to an extent what the Internet is and how it functions. If you have any further question about the functioning of the Internet, let it be put before the experts right now. This is indeed important with the view to smooth out all the aspects of the problem. The other equally important point is that the theme which we have to discuss is not the lawfulness or otherwise of the image-making That is, we

are not going to discuss the point whether it is lawful to make the images and pictures of the animal creatures or not. What we are to discuss according to the theme of the questionnaire, is to determine the permissibility or otherwise of the use of TV for virtuous purposes in the countries where it has become a quite common article of every household, exerting the worst influence on the minds of all--men, women, children alike, endangering their faith and morals, ridiculing faith and its articles and everything standing for good morals and the traditional concept of virtue. Is there any room, strictly within the parameters of the *Shariat*, for the positive use of TV and to launch its channels, thereby to counter the menacing effects it is exerting on the general people by introducing religious programs to the TV viewers?

The case of the Internet: Apart from its other aspects, it involves the use of picture as well. However, unlike the TV, the picture is not an essential part of the Internet. It, as the experts have pointed out, could be used without pictures. The Internet conveys only the material which is put to it.

As far as the picture is concerned, it is an indispensable feature of the TV. But, again, we are not going to take up the issue of the position of the *Shariah* on it. We here are concerned at exploring the limit of the latitude to use the facility of television for the good of Islam by launching our own specific channels and thus to provide the people with the antidote to libertinism

and hedonistic cult the cause ot which is overwhelmingly being espoused by the TV. The common phenomenon of the day is that most people spend a good part of their time viewing the TV, where they, besides obscene spectacles and immoral ways, are exposed to anti-Islam programs structured sophisticatedly to harm Islam, Islamic teachings and Islamic personalities. Worse still, the TV has become a lethal weapon in the hands of the destructive movements emerging from within the Muslim community like the *Qadyanis* and many others. Unfortunately, we are faced with a situation where we have to choose either one evil out of the two ones staring in the faces of the human beings in general and Muslims in particular, both in the cities and the villages alike. Notably, most people, including the children and women, have no means of communication at their disposal except the TV. How can we reduce the all-embracing danger of the TV is the question which we have to meet without delay. We can reduce it by introducing reformative and morally and religiously structured programs. Are we ready to choose the lesser evil (use of TV for constructive, Islamic purposes)? Let me recall Haz. Umar Farooq's observation:

> "Nobody could be wise unless he is able to fully recognize the lesser evil out of the two ones he is faced with."

Obviously it is not so much difficult to recognize the good and virtue and the jurist hardly faces difficulties in giving out his edict regarding such a clear problem. But, on the contrary, he will require to have a me-

ticulous examination ot the state ot attairs to determine which one evil outweighs the other and then to choose the lesser one.

Maulana Zubair Ahmad Qasmi

It is a definitely established principle that the good things are good and, likewise, what is wrong is wrong irrespective of that it is exists on the screen or in the actual world. The same rule is fully applicable to the Internet as well. Earlier, based on my little knowledge of the Internet, I thought it to be a system with both good and bad programs set in.

So every purchaser is at full liberty to purchase either sort of the Internet set. Had the fact been so plain, the problem would have been very much easier as it would have excluded the possibility of its abuse. However, when I acquired some factual knowledge of the Internet, it revealed that there was no such set; all internet systems are identical and every set is fully open to receive all sorts of programs, good and evil, and the matter of selection from among the good and evil programs of the Net is entirely personal; one might select according to one's wish. Under such a condition, when the matter of selection between the evil and bad items is entirely personal, with no outside coercion, the permission for the use of Internet even for the best purposes, as to serve the cause of Islam and Truth and refute the falsehood, had better be subject to restriction. Permission must not be common; available to individuals without an acute sense of piety

and God-fearingness. To my opinion the permission to use the Internet, even for the good and virtuous purposes could be given only to such organizations and institutions which possesses a reliable moral integrity and whose abstinence and God-fearingness is trusted, expected to keep itself limited to the use of the Internet for virtuous purposes.

Qazi Mujahidul Islam Qasmi

Respected audience! I am afraid such a hot discussion may lead to confusion, which must be avoided at all cost so as to arrive at the right result. Relevant to the discussion there are some important points which deserve deeper consideration.

Allah *subhanahu wa Ta'ala* created us as well as the *nafs*. The Qur'an says: فألهمها فجورها وتقواها۔

"Then inspired it to its wrong and its right." (S. 91:8

This *ayat* tells that in the human beings Allah *ta'ala* has placed the sense of evil and virtue alongwith an obvious sense of making distinction between the opposite thing Allah *ta'ala* granted us the eye and placed in it the sense of seeing; now we are able to use our eyes to see either good or bad things. Allah *ta'ala* did not command the general human beings to keep their eyes shut nor decided to deny the eyes of sight lest they might see evil things besides the virtuous ones. Rather, as a matter of general natural rule, Allah *ta'ala* granted all such favours to all and it is in fact the inner belief; the sense of evil and virtue and the intuitive insight to distinguish the right and wrong, the

only thing according to which the matters are decided. Similar is the case of the instruments; all sorts of the instruments are available in the world and it is the nature and purpose of their use which is taken into consideration.

First of all we take the Internet. Had there been a means like the Internet available at the time of the Holy Prophet (SAWS), when he addressed the larger gathering before him on the occasion of the Farewell Pilgrimage, *"So the present ought to communicate (the message of Islam, the religious commands and teachings) to the absent"*, is it imaginable that the Prophet (SAWS) would have proscribed the use of it for the purpose of communicating his sermon to the world at large? Or would he have preferred to use it so as to communicate his message far and wide? This is a line of thinking. I can't prefer either side of it; you all are required to ponder over the point moderately. Actually, the legal position of the use of the Internet involves three issues: first, the use of the TV and Internet. In this respect we face the question that the Internet and the TV show immoral and deprave programs and shots which are leading the society to social corruption and degeneration. The position of the *shariah* is undoubtedly clear; viewing of such programs is totally impermissible.

Next question is whether it is permissible to make such programs, websites or cassettes which seek to transmit the clear and accurate knowledge of Islam and its teachings with a view to be shown at TV and

Internet, thereby letting the world have a proper knowledge of Islam. You perhaps may be at home with the fact that the Saudis have developed a special website, which is now very popular. To our gratification, this website is playing very great role in disseminating Islam and its teachings and, thanks to the website, a large number of the non-Muslims has entered the fold of Islam. Besides, there are many, some of them our close friends, who use the said Saudi site only as their pastime and spend their free time in browsing the Net and find much more there to satisfy their religious thirst. To rephrase the first question again: Is it lawful and permissible to use the TV and the Internet for the service of the Islamic cause and to the dissemination of the Islamic message when they are being extensively being employed to degenerate the society and corrupt the moral fiber of the men and women? And, would it be permissible for the general people to watch such constructive programs on the TV and the Net? To rephrase the second questions: Is it permissible to develop such websites, cassettes and programs which contain correct information on various aspects of Islamic teachings, dissemination of the Islamic message, essentials and important items of the practical system of Islamic mode of living and the *sirah* of the Holy Prophet of Islam, thereby making the right kind of the knowledge about Islam available for the benefit of the general users of those systems?

The last questions is that: would it be permissible for us to launch our own special TV channels to intel-

lectually fight the falsehood on various religious, social and economic fronts and defend Islam against the cultural and intellectual attacks being directed at Islam from all sides? Undeniably, we are facing difficulties in following Islam today; we indeed are passing through a time which has been described by the Prophet (SAWS) "as holding the spark in one's hand". In South Africa, where some of our friends took initiative to establish their own radio station, a case of sex discrimination was lodged against them. They were asked why they did not allow the women to work at the station and offer programs? It is a sort of sex discrimination, a cognizable offence. Like this there might be other problems as well; and it will be very difficult to evade these if we want to take step in the direction of launching our own radio, TV stations. On one hand, these advanced means of communications are being used to vilify Islam and the Islamic teachings, particularly the law of divorce, and the seeds of distrust against Islam are being sowed in the minds of the Muslim masses. But we have almost nothing to counter this vilifying movement. With the availability of similar advanced systems, it will be possible for us to tell the world the fact of the Islamic law, its familial and societal dimensions and various other aspects and make necessary details available for the interested people. As a matter fact, media has become the mightiest weapon today, with a range of attack even wider than those of the atom bombs and even of more advanced other lethal weapons. We can't withstand the contemporary intel-

lectual and anti-Islam cultural challenges without the force of the similar powerful weapon. Under such critical situations would you allow the use of the TV, the Internet and other advanced systems of communications for the defense of Islam against the incessant cultural attacks?

Much the same is the case of the radio stations. Thanks to the concept of the open market, which is gaining currency day by day, now all such things are gradually passing from the public sector to the private sector, and the people may as much own them as the State does. Your private radio station and TV channel will broadcast the news on the same footing as the State-owned ones do. This too involves multifaceted problems. Such things are mostly meant for commercial purposes and show a wider range of commercial advertisements, and, to the misfortune of the contemporary society, it takes only those advertisements which are presented by semi-naked women. The same 'freedom' of women is being projected as maintaining equality between the male and female sexes, whereas it is the worst sort of the exploitation of the female sex. In short, in no way we can evade the problems. Given the problems and unavoidable evils, are you, the *Ulama*, prepared to give permission for the launching of such TV channels and radio stations under the direct supervision of the pious *Ulama* which could compromise with the State provisions for the purpose on such evils to secure financial benefits beside serving religious objectives and giving a befitting reply to the

rising intellectual, social, political challenges? Doing so is indeed a very difficult task, still if there emerge some people or groups which want to take appropriate steps in this regard keeping in view the *shariat* directions and avoiding the negative injunctions, will it be a right step in the right direction according to your thinking? If these issues are decided in the proper context of things, then the greater part of the problem might be overcome. To get better results of thinking, we shall definitely be required not to indulge in other unimportant aspects of the problem. I am sorry for my undue interference, yet it was a necessary note. Again, please avoid causing confusion to yourselves and others. To encapsulate my questions, the problem to be discussed here has three basic aspects: clear indication to what sort of TV programs are permissible to be viewed, positions of the *shariat* on the good-serving TV or radio programs; and, finally, launching our own TV channels whereby we can disseminate the Truth of Islam going by the restrictions of the Islamic *shariat*. So, these are three interrelated questions which have to be discussed in the light of the *Shariat*. Again, I must apologize for my undue interference.

Ml. Arshad Qasmi

Presentation of the theme and the ensuing detailed talk of Qazi Mujahidul Islam Qasmi give rise to several questions.

In the case of the TV, film and the video cassettes an unavoidable question is that their use invariably in-

volves the pictures. Islamic *Shariat*, on the other hand, can compromise only on those things which are not incompatible with its fundamentals and spirit. Animal picture, as it is quite obvious, is entirely opposed to the Islamic teachings and in complete discord with the spirit of Islam.

Now if one is allowed to launch a TV channel to serve the virtuous purposes, one will do so by filming the scenes of the programs; and thus the filmed program will attract the law of prohibition of the picture, hence impermissible. To my view, only the live telecast might be permitted; making records and video cassettes and then playing them on the TV screen is not permissible. Such items, however, might be watched on the TV screen, even though the maker is sinful because the prohibition of the animal picture is an express injunction of the *Shariat;* it is from among the sins whose commission has been threatened with severe punishment in the Hereafter. If it is allowed for the general people without or with light restrictions, the feeling of sin, which still exists, will soon disappear from the general mind and the people will begin to watch the different TV programs with animal pictures under the pretext of good purposes.

Ml. Sultan Ahmad Islahi

In the light of the details which followed the questionnaire I would like to add some useful information in this context. According to a survey conducted by the Jamia Azhar (of Egypt), the Christian missionar-

ies in the Atrican continent own tourteen radio stations dedicated to publicize Christianity throughout the continent. They dedicate 150 hours a week to broadcast their missionary programs in different languages including Arabic. More so, there are various centers which supply these stations with the materials to be broadcast. This survey clearly indicates that chief target of these missionary programs are the Muslims and Islam. This information must be an eye opener for us and we should try our best to counter such destructive moves. This situation makes a strong case the use of the radio. Television and other advanced means of communication might be seen from the same angle of vision.

About the adoption of the lesser evil out of the two unavoidable ones referred to above by Ml. Atiq as the saying of H. Umar (may Allah be pleased with him) I can say nothing. However, Hafiz Ibnul Qayyim (may Allah deal him with mercy) in his book *al-Jawabul Kafi* has cited H. Umar as saying: Islam will disintegrate the link after link when in the Muslim society appears who is ignorant of the ways of *Jahiliah*. Another point is related to the animal picture. Although Ml. Atiq has repeatedly made it clear that the problem of the animal picture was not under discussion, yet it is quite obvious that if the TV and its use is ever discussed, the animal picture unavoidably turns out an essential part of the problem as the TV and its use for any purpose is not imaginable without the involvement of picture. Animal picture in fact is as much in-

separable from the TV as the salt from curry. If only the programs are played on the TV, then it in no way will be called the use of the TV. TV, as it has been expressed, can't exist without the concept of the animal picture. Therefore, in my opinion, it is the undue use of the animal picture which has to be refrained from. And, if the *Fiqh* Academy is prepared to let the people loose on the count of picture, then it is better to refer the problem to the *Ulama* themselves; those who hold the use of pictures as lawful may do so, and likewise, others may go by their own view. But in any case it is not a proper course of action to unduly insist on the use of TV without picture. Moreover, the hardline stand against the animal picture is improper. Present discussion, however, is not a pertinent occasion to discuss in detail the arguments of the opposing viewpoints.

Apart from the use of TV for the publicity of Islam and its teachings, a yet another point is the use of other means of communication and transmission for the above indicated purpose. Their use for the purpose not just be made a subject of legalistic menaces amongst the men of Islamic learning, it now should assume the status of a religious duty, far too ahead from the question of lawfulness. It, as the Qazi Sb. has said, should top the list of our priorities and every one else, according to his means and might, must take part in the over all move of the dissemination of Islam and its teachings. Finally, it is not consistent with the guiding position of the *Ulama* to evade giving their definite

opinions on the use of TV and other means of communication for entertainment. It is because of that entertainment must not be excluded from the religious boundaries. Entertainment is the most essential part of the modern means of communication. But entertainment is limitlessly free; and restrictions may be put on it according to the well-established principles of the *Shariat*. But in India, indeed in most countries of the globe, we are living under the condition of unavoidable general problem, and it is hard to eschew from many entertainment programs. Given the said circumstances, a rigid position on the entertainment will not be sane. Towards the end of my talk I would like to say that husband is not permitted to impose his religiosity on his wife. His job must remain limited to admonishing and counseling her.

Dr. Abdul Azim Islahi

Present discussion on the unlawfulness of the animal pictures, which the use of TV essentially involves, is good. But the reason behind its unlawfulness might be a point of disagreement. Generally it is thought that the animal pictures may gradually lead to idolatry, the gravest wrong of mankind towards its Master and Lord. This of course is debatable. Most Ulama see no problem with the smaller pictures. It is because of that such pictures are generally subject to trampling and an un-respectful treatment. The same logic may legitimately be put forward to legalize the use of pictures nowadays. In most cases they involve

no aspect of reverence. Thus, these pictures too share the same logic of permissibility. Suppose if a man of religious learning appears on the TV to give religious presentation, he will obviously take against the concepts of idolatry and *bid'at*. And this will exclude the fear and apprehension about the pictures of the *Ulama* to become the object of public reverence. Equally important is the point that many things are intolerable as they stood, but for a greater and important cause we have no option other than tolerating them and the *Ulama* have declared such things as lawful. Take for instance, the poetry of the pre-Islamic poet. Imraul-Qais. Despite the fact that his poetical heritage is only a pile of obscenity, yet for its literary and linguistic value it has been incorporated into the curriculum of our religious seminaries and for centuries we have been studying and teaching it with no feeling of disgust and repugnance. There might be similar other things as well. Here I recall a noted man of Islamic learning who in the *Ijtihad* seminar of Patna, had said that there were many issues on which our *Ulama* have reached an unexpressed but practical consensus. Now whatever they need is the verbal expression of this practical consensus. Such issues include the position of the *Ulama* vis-à-vis the picture. Is it not a strange phenomenon that most of our *ulama* declare the animal picture as unlawful on one hand but they themselves feel no hesitation in being photographed and published in newspapers on the other. I think that this double standard has to come to an end and, after a careful study of different

aspects ot the animal pictures under present circumstances, a prudent policy has to be adopted at the earliest.

Ml. Ubaidullah As'adi

It is being repeatedly said that the theme of the discussion has clearly been put forward, and, as the Qazi Sb. has just called the attention of the discussants to it, the discussion had better be restricted to the theme itself. The question in hand is not of the lawfulness or otherwise of the picture. The general position of the *Ulama* on the animal pictures is negative and they have supported it with strong arguments. Here we are not concerned to discuss them. Picture is an essential part of the television and the use of TV is not conceivable without picture. The remark of Ml. Sultan Ahmad Islahi on the talk of Ml. Atiq, therefore, is not pertinent. What Ml. Atiq Ahmad meant was that the present discussion was not meant for discussing the position of the *Shariat* on the animal picture; it, rather, is revolving round the present social milieu in which we have to live, where most people have no other means of communications than the television, Internet etc. For their knowledge of things around them, and whatever happens in the world, they depend mainly on those means of communication which involve the animal pictures and other moral evils. Such means are always within their easy reach, available at their homes. So they use them extensively. As far as the common traditional means of knowledge are con-

cerned, they neither have time tor nor access to them. Even they are not appealing to them. The worldly affairs have covered them in the manner that have rendered them completely unable to arrange and spare time for the purpose of knowing anything beyond the scope of their routine life and job. So the primary question is that shall we be right in the use of television, Internet and other similar means of communication for the purpose of communicating the Islamic teachings to the people of the said social milieu, given the situation that all groups and religious dispensations are using the same means to disseminate their thoughts. This permission should remain limited to such social conditions. We are the people of strong religious background, living inside the *madrasa* milieu; we can live without using the TV and the Internet. But to cater to the religious needs of the new generations in India and abroad what kind of solution we would offer if we seek no help from their familiar means of communication. With the fast growing popularity of the TV and Internet, the trend of the radio is fading. The present changed social phenomenon has left us with no options other than using the TV and Internet for the purpose of religious propagation. This being the question to be discussed and the talk should go round the very question in order to arrive at an acceptable solution.

Dr. Abdul Azim Islahi

I think that the *Ulama* are reluctant to use the TV only due to that it involves the animal pictures. As far

as the objective ot its use and the importance ot the objective are concerned, no *alim* can afford to go against it. So, the position of the *Shariat* on the animal picture and to what extent one is required to refrain from its use has not yet come under the discussion.

Ml. Ubaidullah As'adi

We shouldn't go into the detail of it.

Mufti Sa'idur Rahman (of Mumbai, India)

Apart from the legal position of the *Shariat* on the animal picture, I regard the TV and the Internet like a world. As anyone else can walk in the world without a problem and is able to see, hear and learn the good or bad things, so is the case of the radio, TV and Internet. The only difference is that these modern communication are within every one's easy reach. Only by pressing a switch you can have whole the world of virtue and vice before you. The only thing which can guard the man against the temptations of the evil is the individual sense of distinguishing between good and evil. He has the TV and the Internet under his control, and now it is totally up to him to choose either one out of the two options. So, based on the Qur'anic verse لها ما كسبت وعليها ما اكتسبت . "For one is whatever one earned; and on one is whatever one committed", the use of such things should be allowable without reluctance. Ironically, all people, including the pious men of Islamic learning, read the newspapers which have a plenty of

pictures on their pages. But no *alim* has yet objected to the reading of them. Since the TV and the newspapers share the same reason of prohibition, the newspapers too should be held unlawful. This is a point to which I would like to call your attention. Now a question is put before the experts: they should tell us what difference is between the TV and the Internet. For the people like myself the question is important and the answer will enrich our knowledge.

Mufti Nasim Ahmad Qasmi

About the subject matter of the discussion I would like to put two points here; first, it is an undeniable fact that the present world is seeing a marked rise in depravity, obscenity, immodesty and impudence and the television is playing a much greater role in this regard. The things which once were unimaginable to be existant in Muslim society and families now could be seen in the bedroom of today's Muslim. Worse still, the people are getting accustomed to those obscenities. This phenomenon has posed a very serious threat to the moral fiber of the society, and is engendering quite unimaginable social and moral evils.

The second point is that Allah *subhanahu wa ta'ala* has charged the *ummate Muslima* with the responsibility of calling the world at large to Islam and absolute good and forbidding the world from falling into wrong. The Holy Prophet's following words indicate to the same collective responsibility of the *Ummah*.

"Whoever of you saw a wrong, he must sup-

press it by torce; it he can't attord so, then he must denounce it by his tongue. But if he can't afford so doing, he must regard it a wrong by his heart, and this last one being the lowest grade of Faith."

As far as the checking of the moral evils is concerned, this *hadith* mentions three grades of it. The top grade of faith is to intercept the happening of the evil by force, provided one can afford doing so and suppress any further breaking out of the evil; the next grade is to denounce the evil and its perpetrator by tongue. But if one is without the position even to denounce the evil by one's tongue, one must at least detest it by one's heart. Given the present helpless situation of the Muslims in the world in general and in India in particular, where the Muslim *Ummah* is without political sovereignty and complete religious freedom, we can't fight the evil by force. What we can do here in this regard is to launch our own specific radio programs and TV channels to fight the spreading evil through reformative programs, thereby offering a positive alternative to the television viewers. For the purpose we may hire, purchase or develop our own channels which are free from commonly popular evils and obscenities. In countries like India we are obliged to make all possible provisions in this regard. We must get lesson from the efficient working of other religious groups and the misled sects like the *Qadyanis*. The Qadyanis have since long their own channel to give publicity to their heretic thoughts; and a large number

of the Muslims is misled into regarding the Qadyanis propaganda to be a sort of the Islamic programs. Also, there are people who, even in this age of nudism and obscenity, like Islam and its noble teachings, desirous to know more things about it. Through the intermediary of the TV and other advanced means of communication if we cater to the religious requirements of this class of people, it is expected to prove very useful for them. To quote here the late Ml. Abul Mahasin Md. Sajjad, founder of the *Imarate Sharaiyah* (Bihar & Urisa)

> "The Muslims must not spare anything they whatever have at their disposal for serving the cause of religion. If we honestly did so, Allah *Ta'ala* will facilitate for us the things we presently have not."

Qazi Mujahidul Islam Qasmi

Don't prolong your talk too much.

Mufti Naseem Ahmad Qasmi

In countries where Muslims enjoy full political sovereignty, they must set up their own radio stations for the purpose there. But in countries like India we can afford no more than purchasing our own channels. Declaring a thing unlawful is not just enough for the *Ulama,* and it can't absolve them of their religious obligations; they are also required to arrange a lawful alternative for the TV viewers, so that the general people might have recourse to it in the stead of the unlawful.

Ml. Shaheen Jamali

To me the Qur'anic verse:

ومن الناس من يشتري لهو الحديث ليضل عن سبيل الله بغير علم ويتخذها هزوا .

"And from among men there are such who purchase the idle tales without knowledge to mislead people from the path of Allah, and make it a mockery",[1] seems suggesting that the term *'lahwal hadith'* includes the Internet as well. Obviously, the Internet is being used for the publicity of falsehood, depravity and immorality. As far as its use for the publicity of Islam and Islamic teachings is concerned, it could be regarded as lawful only as a matter of *fatwa*; piety, however, can hardly allow it. In other words, it may be useful for such people described by our poetic legend, Akbar Allahabadi, in his following verse:

Uneh zoqe ibaadat bhi hai aur gane ki aadat bhi
Nikalti han dua bhi unke munh se thumriyan banker

(They possess a taste for worshipping Allah, but, simultaneously, are accustomed to singing as well. Prayer too is borne of their mouths in the form of musical rhythm.)

I again would like to repeat my earlier words: "Fatwa can make the use of the Internet lawful, but the piety can't."

Ml. Atiq Ahmad of Basti

Two names are left, and soon we shall know

[1] al-Qur'an 31: 6

their views as well. The question ot picture, which is being repeatedly raised, as Ml. Sultan Ahmad Islahi and Dr. Abdul Azim Islahi did, is a matter of future. What I want now is to call your attention to the practical facts of our routine life which essentially involve the animal pictures. We all read newspapers, and indeed many pictured books like *al-Munjid* (an Arabic dictionary). Undeniably, every Muslim library has *al-Munjid* and, like the newspapers, it is in general use of the *Ulama* and the non-*Ulama* alike. Obviously, this phenomenon is being compromised on merely because the pictures are not intended in themselves. Intentions bring difference to the legal position of many things. This is point which invites your consideration.

Ml. Akhtar Imam Adil

About the problem of the animal pictures, whose prohibition is almost a consensual proposition amongst the *Ulama* of the subcontinent, and whose legal aspect is being said to be kept out of the present discussion – I would like to submit that here we are to explore the possibilities of the permissibility of it in view of the necessitating circumstances, as is the case of the necessities like obtaining passport etc. It, again, has to be cleared here that the animal picture is absolutely unlawful; its permission is being considered on the grounds of the necessity.

Another point which is equally important is that seeing the picture is legally different from making it. If

the picture is not intended in itself, its legal position, as Ml. Atiq Ahmad has cleared, becomes different, and it can be taken lightly. But making picture or causing oneself to be pictured or photographed with no genuine reason, contrariwise, is absolutely unlawful, and on this count there is no considerable difference of opinion amongst the *Ulama*.

A yet another point is that the late Ml. Thanawi is being referred to here as an *alim* who made allowances for the changing circumstances. It is said that H. Thanawi had permitted the people to make *Ta'azia* but never convert to Hinduism. This in fact is the case of choosing the lesser evil from among the two ones. And, quite obviously, making *Taazia* is far too lesser an evil than turning apostate. Moreover, H. Thanawi's permission ensued from the position of a *Dai*, whereas we are here concerned with the position of a *Mufti*. What will happen if both the positions are mixed up? The point has to be considered.

Ml. Abul Ass Wahidi

The question under discussion has many ramifications; Internet, radio and television. As far as the Internet and the radio are concerned, evil might be removed from them, hence no problem in establishing their stations. As regards the launching of our own specific television stations and making of the video cassettes, they too should have no problem, given the present changed circumstances. About the inherent involvement of the pictures in the TV, which perhaps is

the chiet reason to attract the law ot prohibition to a near-total majority of the *ulama* of the sub-continent, there are two very important points which are worth observing, and then the problem of picture could be explained from a different viewpoint. The pictures might be treated in two ways: (i) respect and (ii) no-respect. As far as the reverence and respect is concerned, it will absolutely be unlawful to make pictures and images with a view to accord respect to them, and such a concept shall purely be un-Islamic. As regards the second point, i.e. no respect is accorded at all, many *ulama* see no problem in the use of such animal pictures. To explain the point, if one happened to have a sheet with animal pictures, one will be committing no wrong if one makes it one's bed-sheet or an article of similar other humble uses. In the Sahih Muslim we have a narration which reads that once H. Ayisha used a pictured garment as curtain hanging on the wall. But the holy Prophet (SAWS) disapproved of it. He, however, allowed her to cut it into pieces and then use them as the pillow covers. We have no further details as to the exact nature of the cutting; still it seems clear that their use for the purposes where no aspect of reverence is involved is lawful. This narration may offer insights for developing a sound thinking regarding the problem of picture and the same rule may be applied to the pictures of TV system etc. In television the pictures neither are intended nor treated with respect or sanctity. In short, while discussing the problem of pictures, this point of no-srespect towards the pictures

appearing on the television screen must not be ignored, for it may help the discussants arrive at an opinion closer to the spirit of the *shariat*.

Ml. Arif Mazhari

Regarding the problem of picture which is being discussed here, I would like to say that for the religious benefit of the TV-addicted people we will have to do something positively. Only issuing *fatwas* will offer no help in this regard. To rescue a drawing person requires that we should do whatever we can; gathering around him as onlookers will be of no help for him. The more the problem is entangled, the wider implications are feared to come in. Through the pictured programs we can save the larger amount of our precious time. To communicate the religion of Islam and its teachings to those who stand misled and misguided, far away from the genuine religious thoughts, we shall have to bear something. More precisely, under the present state of affairs we are left with no option other than resorting to the use of pictures as and when required, for the communication of religion to the TV-addicted people is also part of our duty.

Ml. Atiq Ahmad of Basti

We have Mr. Jamshed, an Internet expert, among us. He wants to express his views before the audience. I call him to come and enrich our knowledge about the Internet.

Mr. Jamshed

About the Internet many people think that the *sites* can't be locked, as many *ulama* have just expressed. The sites, loaded with the information, could be locked through a specific program. Operationally, this program is used in two ways. There are many sites which mostly comprise the necked, immoral pictures. Such sites have been locked in most countries of the world including India. Likewise, the telephone sites too are blocked. We personally faced a major problem while working on Islam online. In it we encountered the Christian Answer to Islam. To counter the Islamic *dawah* the Christian missionaries have developed many sites. Through these sites the missionaries communicate the false information about Islam and its teachings to millions of their immature targets in a very sophisticated and misleading way. But, strangely enough, all those sites which can successfully counter such efforts have been locked in the UAE and Saudi Arabia. About Syria and other Arab countries we know not. Precisely speaking, the sites bearing the name 'Christian Answer to Islam' have been blocked in most countries of the Muslims world. On being asked why such sites have been locked, the concerned officer in Sharjah explained the reason that people were not mature there. They are feared to fall prey to the Christian tactful misleading propaganda. But this blocking approach too is proving to be equally harmful. There are thousands of men in the Muslims *Ummah* who are well qualified and well-prepared to

counter the anti-Islam Christian propaganda campaign and refute the groundless allegations against Islam. But being the Christian missionary sites locked, all these well-equipped Muslim youth have practically been rendered impotent. In other words, we can say that a major chapter of the Islamic *dawah* activism is lying blocked. The gist of my talk is that the Internet has now become an essential tool of the Islamic *dawah*. I would like to recall here the saying of the late Ml. Ali Miyan Nadwi (may Allah deal him with mercy). He said that to fight against Islam in an efficient way, one is essentially required to have a sufficient knowledge of the anti-Islam campaign. So under the present circumstances we are left with no option other than employing the same tool to fight the anti-Islam propaganda.

Ml. S. Nizamuddin

In spite of knowing that determining the *Shariat* position on the use of Internet and the television is one important theme out of those to be discussed in the Fiqhi seminar, I wrote no paper to present here. However I had the opportunity to see the papers, both detailed and short, written by our men of deep Islamic learning in response to the questionnaire. If our intention is to disseminate the religion of Islam and furthering its cause, then we must be realistic. With such a high intention we can't afford to ignore the ground realities. Our religious obligation is two fold: dissemination of Islam and the defense of Islam. You will have to

introduce your religion to the world at large explaining its merits and virtues to the people; and, on the other hand, defending its belief, practices, moral values and its social structure against the undue criticisms and iniquitous objections expressed from time to time by the anti-Islam elements. Today, the adherents of falsehood are making a maximum use of the modern advanced systems for the purpose. By confining ourselves to the use of the traditional methods and conventional ways we can't discharge our duty of defending Islam as the present unprecedented circumstances require. Today, we can never give a befitting reply to our nuclear weapon-armed opponents by using our old and obsolete arsenal. The agents of Christianity have launched a worldwide mission to propagate Christianity by using the most advanced means of communication which they have at their disposal. The mode of the propagation of Christianity gained momentum after the collapse of the Russian empire and now it has craftily been changed into Islam versus Christianity. We can't ignore this blatant fact that Islam now is the single target of Christian propaganda. Countries like America and Israel are weaving intrigues against the Islamic world and Islam itself. In fact all the intellectual opponents of Islam want to see Muslims and Islam as submissive to them, stripped of its extrinsic and intrinsic strength dependent on the world of un-Islam and anti-Islam in term of its social, cultural, political economic structure. They want to suppress the Islamic ideology and its adherents to the

extent that they could never dream ot reclaiming their last glory and ideological and political ascendance. In fact the anti-Islam elements are planning to defeat Islam in its purpose which the Qur'an has stated in the following verse:

هو الذي أرسل رسوله بالهدى ودين الحق ليظهره على الدين كله ، ولو كره المشركون

> It is Allah Who has sent His Messenger with Guidance and the Religion of Truth to cause it to prevail over all religion, much to the aversion of the pagans.[1]

In this country too we are faced with the same challenge. To be candid, our country fellows, statesmen, the ideologue and the men at the helm are apprehensive of the potential future should the Muslims and Islam succeed in re-establishing themselves on the land. They seem always to be obsessed with the unseen fears that their pagan culture and polytheistic so-called civilization might suffer defeat in the face of the Islamic culture and civilization. In view of these bitter facts and realistic compulsions there seems no wrong in using the modern advanced systems of communications for the defense of Islam and to disseminate the Islamic message worldwide. Even, doing so might turn a religious obligation. To be particular, as far as the Internet *per se* is concerned, the Islamic law has no aversion to its use for the right purposes. The debate around the problem of picture is totally nonsensical and uncalled for. In connexien with the animal pic-

[1] al-Qur'an: 9: 33

tures a sharp contradiction between the precepts and practice of the *ulama* of our age is being seen. Whenever they are asked by the media persons to give their picture to be published, even the noted *alim* entertains no hesitation in complying with the demand. On the other hand, if the same *alim* is asked about his opinion on the picture, he admits to the law of prohibition and outspokenly declares it unlawful. If, for instance, we don't video the natural calamity hit areas of our land, how could we tell the tale to the world outside? Without the help of these modern inventions and systems of communication we now can't be able to make the outside world assess the extent of sufferings of the victims. What you need is to avoid the misuse and abuse of these means and systems. However, in most cases, it is beyond one's capacity to avoid the use of picture if one wants to use them for any purpose. Take, for instances, the television. If you use it for any purpose, it will inevitably involve the use of picture. One very simple and commoner use of the TV is for the purpose of news, which we can't avoid if we want to keep abreast of the latest developments taking place across the world. In case the use of the TV even for this commoner purpose, the viewers shall unavoidably see the pictures of the persons involved, men and women alike. Most of our *ulama* hold the seeing of pictures in this way as lawful.

So far as the other aspect of the picture i.e., the making of them, is concerned, in the case of the television and videography the prohibitive ruling of the

shariat is not applicable to it all; it is never a process of picture making, it is of the scene-capturing instead. If we are sitting together anywhere, the scene might be captured today, thanks to these modern inventions. You may use them for positive purposes without problem. In other Islamic countries, including Pakistan, these inventions are extensively being used. Are there no *ulama* of the Qur'an and *Sunnah*? It is the Indian *Ulama* who are still reluctant in this regard; the case of Pakistan, as far as I know, is very much different. In Indian we are not in a position to launch our own radio and television stations because it is almost impossible to run them without showing commercial advertisements, which we can't have without involving in absurdities. What we can afford here to do is at least launching our own television channels and get Internet connections. We may launch our own websites and supply our special channels with good, constructive programs. You can use these channels and programs to awaken the masses to the rising moral and social evils. To establish a direct contact with the masses we indeed have no better means than television, radio and Internet. I myself saw the Hindu audience appreciating the importance of *purdah* system for women in Islam and the evils of nakedness and half-nakedness. Even the highly educated people could not help expressing their deep appreciation of the *khatib's* address he had delivered in a *Nikah* gathering, about the importance of *purda* and the evils of opposing and discarding it. Apart from the Muslims, the Hindu audience admitted

the bitter social realities that have unfortunately emerged out as a corollary result of the general negligence to the *purda* provision. What I am to stress on here is the fact that your right and proper use of these modern means and communicative systems will bear right and positive results. So, in view of these facts there seems no wrong to the use of Internet. The radio may also be of very much help in furthering the cause of Islamic *dawah* and disseminating the message of Islam worldwide. The TV channel, likewise, might be even more useful for the purpose. In the latter case the picture of the speaker will have to be tolerated because no talk on the TV is acceptable without the image of the speaker. The scene unlawful to be seen or heard outside the TV screen shall also remain as much unlawful on the TV screen as well. If we have today the opportunities of securing our own radio stations and television channels, we must avail of them, entertaining no doubt regarding the use of the pictures as the images and pictures are inherently associated to the TV and the Net. Mere making program and issuing edicts can solve no problem of ours. Going by the fundamental rule of the Islamic law; *necessities make the prohibited things lawful*, we may use the radio, television and the Internet for the right and constructive purposes.

H. Qazi Mujahidul Islam Qasmi

The venerable *Ulama* and the dear youth of the *millate Islamia!* The subject you are debating here is very important and subtle. We must not ignore the fact that the difference of opinion noticed here between the views of the men of Islamic erudition present here on the use of the Internet and television and the toleration of the animal pictures in the use of the television and the Net has neither ensued from a stubbornness nor an egoistic attitude towards the religious facts. The *Ulama* of both the opposing view intend no other thing than to guard the religious against all possible types of interpolations and warn the Muslims of the disobedience to Allah and crossing the proper limits set by Him. The *Ulama* holding a negative view towards television and the Internet are as much conscious of the pressing needs of the Islamic *Dawah* and safeguarding the religion as are those who favour the view of using these scientific means of communication and advanced information technology for the religious ends and furthering the cause of Islamic *Dawah*. The problem of the animal picture has assumed a perplexing nicety. It has exposed the yawning gap between the thought and practice of the *Ulama*. Whenever asked about the position of the *Shariat* on the pictures we entertain no hesitation in declaring that all types of animal pictures are unlawful in Islam. But on the other hand, few are there those who might try to intentionally avoid involving in the use of pictures whenever arise the situations of the

picture use. In tact, practically we are involved in the use of pictures. This phenomenon of double standard is embarrassing indeed. Whenever asked to explain this contradiction silence is the only option before us, even before our great *Ulama* commanding much respect. Sometimes we feel that thus we are committing the guilt of maintaining silence at the cost of Truth, but other times try to conceal this contradiction under the *law of compulsion*. To come out of this dilemma I would like to invite the attention of the *Ulama* to ponder over some questions which may ultimately lead us to take more sound decision. We are required to determine the real meaning of the term *haraam* (unlawful), taking into account the conditions mentioned in the *Fiqhi* literature to apply the law of *haraam* on the use of a particular thing. We are required to clearly differentiate between *haraam* and other legal prohibitive terms of the Islamic jurisprudence like *makrooh* (undesirable), *makrooh tahreemi* (strongly undesirable) and the *makrrohe tanzeehi,* and, likewise, between the *ibaahat* (lawfulness), *istihbaab* (desirableness), *sunnah* (imperatives) strongly recommended by the *Shariat, wajib* (recommended more strongly than the *sunnah*) and the *farz* (obligatory). The difference made by the jurisprudence between various categories of prohibitives and imperatives is not without reason. Being the *ulama* we must be aware of the definitions of all such terms and the legal implications associated.

We should also not ignore the fact that the degree of prohibition of the use of animal pictures has

been described by our noted men of learning and the muftis as *ghair jaiz* (impermissible), and not *haraam*. This indeed is the judicious and conscious use of these legal terms.

Now in the modern perspective of things problem of the animal picture has to be taken into account on two grounds:

- The use of picture has been allowed for the purpose of the passport and similar other formal requirements under the *law of necessity*, 'Is the law of necessity' not applicable to the case of the person dying far away from his home and nobody knows his whereabouts? Taking into account the legal importance of the effects the death of a person brings to his marriage and the legacy, will it be unacceptable to the Islamic *Shariah* to take the photo of the deceased in order to determine his identity on which depend the solutions of the said important problems? Likewise, there might be many other problems whose solutions could be found out in a more effective manner if the photo of the deceased is available.

By contrast to this legal requirement of the photo, there could be seen the phenomenal misuse of the photos and pictures. The making of the videocassettes of the marriage parties and other social festivities in manner even more immoral than the nakedness of the pre-Islamic pagan age offers a very conspicuous example of it. This indubitably unlawful and absolutely unacceptable to the Islamic *Shariat*. However, as

far as the lawfulness or unlawfulness of the use of pictures is concerned, nothing could be said categorically. In the midst of the picture-related questions this point is crucially important.

The question of the photo and picture apart, for the time being, we may limit our discussion to the legal possibilities and implications of developing some websites under the direct guidance of the noted and reliable men of Islamic learning, with an intention to communicate the message of Islam and Islamic teachings to the world and preparing the data to give correct information about various aspects of Islam, as Mr. Jamshed has just pointed to this fact. The Christians have numerous channels and websites to clear the doubts of the people about its irrational beliefs and fundamentals. These channels and websites answer the questions about Christianity made by the followers of Islam and other religious. Furthermore, they sow the seeds of heresy, agnosticism and distrust in the Muslims against Islam and Islamic teachings. They often subject Islam and its noble and natural teachings to their groundless objections and intellectual onslaughts. Unaware of the enormity of this anti-Islamic propagation campaign, the uneducated and less educated masses are bound to fall prey to such misleading tactics. The same strategy is being widely employed by the Christians in Bangladesh, in the African continent and Indonesia. According to the latest data of these countries, Christianity is fast gaining foothold in the countries mentioned. We the Muslims, on the other

hand, are doing almost nothing to counter this sinister campaign. It is gratifying to note that the kingdom of Saudi Arabia and United Arab Emirates have taken initiatives in this regard and their efforts are yielding very encouraging results.

But the question we face here is whether we are prepared to tolerate the indispensable use of pictures, making all possible efforts to avoid them. It is indeed gladdening to know that some our Muslim brothers have prepared many sceneries with the view to give a visual display to various natural phenomenon mentioned in the Holy Qur'an as the systematic alteration of night and day and the setting and rising of the sun. All such sceneries have been prepared without the least involvement of animal pictures. Such sceneries enhance the level of understanding of the Qur'an.

In short, the present changed state of thing is calling upon us to make a maximum use of the Internet for the advantage of Islam and Muslims, having made full preparations. The world is long awaiting your *Dawah*, your message, your noble principles of the universality of mankind, and equality of mankind. If you use the Internet to tell the wretched humanity that all human beings are equal their origin is the same and the gradation of human beings into noble and object, into Brahmin and Harijan, into upper cast and lower caste is wrong and unnatural; all human beings are from Adam and Eve; and that Islam maintains no difference between man and woman in as much as their rights and duties and confers the human rights

on both Muslims and non-Muslims on an equal footing. If we the Muslims use the Internet for the above purpose with a convincing power of approach, it could be used for an inconceivably great advantage of Islam and Muslims. Thanks to the marvelous performance of the Internet, we now are in a better position to defend Islam against the intellectual onslaughts, and dispel the doubts and misgivings about various aspects of Islamic teachings. To sum up, we have no other options than dwelling upon the nature and implication of the problem of picture so as to gain more strength for the true service of Islam.

وآخر دعوانا أن الحمد لله رب العالمين .

Mufti Mahboob Ali Wajihi

Praising Allah and sending blessings on the Messenger Muhammad.

Respected *Ulama* and dear audience!

You have come across all the three themes of the *fiqh* Academy, the abstracts of the papers offered by the answering *Ulama*. You also had the opportunity of debating all aspects of the questions in a satisfying manner. The rest of the points are due to be discussed later in the second session. To get better results of our thinking about the problems in hand, we may have other approach as well. In the blessed era of the holy Prophet (SAWS) the armament chiefly consisted of swords, armors and shields and, naturally, the Prophet too had no option other than using the same arms. But, today all such arms have lost their importance and role

in the practical warfare. Even the Muslims don't use them to fight a war against their enemies. The *ahadith* proclaiming the prohibition of punishing any creature by fire are technically well-proved. But despite of our knowledge of the fact, we stand compelled to use the fire arms to fight an enemy equipped with the fire arms. Without maintaining such parity we have no right to dream for success in the face of the enemy. We shall be able to safeguard ourselves, our properties and our religion only if we are equipped with an armament of the same quality as of our enemy's. The only reason behind the smashing defeat of the collective forces of the Indian Muslims and Hindu in the face of the English army was nothing other than the English army stood better equipped in terms of the quality of their arms and ammunition as compared to their counterpart Indian forces. Thanks to their superior armament, the English army was able to have a bigger advantage over the Indian freedom fighters. As a result, whole the country fell to English imperialism and reeled under the English rule for a complete century.

Now if we continue to persistently refuse the use of Internet and other advanced systems of communication for the defense of Islam and disseminating its noble enliving teachings, we are doomed to lose the intellectual and ideological warfare waged on us by our ideological opponents in the manner we lost the war of independence against the English imperialism.

The fact that the motivating intent of the actor

behind his act plays a crucial role in determining the legal position of the act is undeniable. By the use of the pictures and photos if our intention is to indulge in obscenities and deprave the society, we shall be liable before Allah for our impious intentions and wrong doings and could never escape His wrath. By contrast, if our sole intention is to guard our religion, defend Islamic teachings against the misgivings and apprehensions sown by our ideological opponents and atheists and in this course we feel compelled to use some pictures, then not just we are expected to be left unquestioned, but, the act, in all probability, may fetch reward from Allah. To my opinion, therefore, there seem no wrong in the use of pictures if it is strictly kept within the bounds of the needs. I am hopeful of that you the *Ulama* will reconsider the problem of picture and its use for the defense of Islam and the dissemination of its teachings in a more open and broader way. May Allah crown our efforts with success and correct our intentions, forgiving whatever wrong we might commit in the process.

To have a reconsideration of the problem of picture we may seek help from the Holy Prophet's *hadith* which reads:

> "O my Companions! You are living in an age in which you will destroy yourselves if you ignore even the tenth part of the religious commands. There shall come an age in which it will become too hard to lead a life according to the lines of Islam and acting upon the directions of the religion. In such an age the Muslims will attract forgiveness

from Allah if they adhered even to the tenth part of the Islamic teachings and religious commands."

Undeniably, present age is the time in which a Muslim is finding difficult even to follow the tenth part of the religious teachings, due to countless internal and external impediments.

To cut the long story short, going by the juristic principle *Necessities make the prohibitions lawfull,* the use of the Internet and similar other modern advanced means of communication might be used for the defense of Islam and communicating its message to the world at large. May Allah made it easy for us to follow the right course of action, overlook our wrong-doings, and accept our good efforts we are making for the good of Islam.

(In the first session Mr. Tariq Sajjad, an expert in the Internet technology and its multifarious use, had given good, useful tips regarding various Internet uses. In the second session too he was again requested to kindly give a more elaborate exposition of different aspects of the Internet and its positive and negative effects. He also answered many related questions. Ed. & Tr)

Tariq Sajjad

In the previous session I had tried to impart some fundamental information about the Net system to the audience *ulama.* My talk might have given rise to many related questions, as a very similar situation was seen in the earlier session during which the legal position of the Islamic *Shariat* on the Internet was discussed. Questions are encouraged and welcomed. I'm

ready to tace all such questions which might help us in gathering a maximum knowledge about the Internet system and various dimensions of its use.

The second part of my talk is to give you a glimpse of the method of work which is being done by various Islamic organizations, groups and devoted movements associated with the Internet. Moreover, in the earlier session my talk remained limited to the positive and useful aspects of the Internet. Now in the present session I would like to expose the other side of it. In presence of the noted men of Islamic learning here it will be very good to assess the destructive effects of the Internet on the society at large. This needs not mention that India too is no longer immune to the bad and immoral effects of the Internet. If you have any questions, I will try to clear it and then resume my talk.

Method of working of the religious organizations on the Net

The World Wide Web is being used for religious purposes by various Muslim organizations and bodies in the following ways:

- Feeding the website with the Islamic knowledge. The entire text of the Holy Qur'an is available on the Net.
- To facilitate the search of Qur'an by the clues of its words and verses.
- To facilitate the downloading of different Qur'anic commentaries in different languages of

the world and the entry and downloading ot all the disciplines of the knowledge

- The launching of the Islamic Relics Chat. As a result, an album of all the beautiful *masjids* across the world is available on the Net. The recitation of the Qur'an and the tone of the *azaan* of the Holy Kabah etc. are available on the Net in the multimedia site. The Qur'anic text too may be downloaded.
- The Islamic *Fiqh* site.

All these things are available on the Net. following is a brief statement of the constructive religious activities being carried out by different Islamic bodies and religious movements.

- The message of Islam is being widely communicated to the world at large through the Islamic websites and Home Pages. There are many Islamic sites which are very actively doing the Islamic job in a very encouraging manner. For instance, ISNA (Islamic sites of North America), IKNA and Islamic Research Foundation (of India). Likewise, there are many other websites which are devotedly engaged in communicating the message of Islam and Islamic teachings to the world. Furthermore, electronic publication of the Islamic literature about various aspects of Islam, the Qur'an, *Sunnah,* Islamic jurisprudence, the Islamic *Shariat,* the Islamic quizzes and suchlike other programs is taking place. Today most people are least interested in gathering knowledge

ot any type in the torm ot hard copies, books and newspapers. The people associated with the Internet and computer prefer to have the knowledge and information in electronic form. The material available on the Net about the Qur'an and *Sunnah* could be downloaded free of cost. There are many sites bearing the name Frequently Answer Questions; in case you have any questions to ask, you may enter the question into any of these sites and the *ulama* associated will put the answer on the same site. An example of this is Islam Online, which has been launched by Dr. Yusuf al-Qarzawi. Any type of questions could be asked through this site.

- Islamic SERVER has been established. The Islamic server provides free of cost facilities to Islamic movements, organizations to develop their own e-mails and websites. There are many Islamic organizations which offer free of cost space to any one else wishing to develop his own Islamic informative website. You may enter your programs on the Islamic knowledge into their servers (the bigger computers capacious enough to store the huge quantity of knowledge and information and control and supply it to other computers connected with it through networking). If you want to connect your home page or Islamic website with these servers, you are allowed to do so without paying anything. There are numerous organizations which offer free-of-cost space for

developing Islamic web pages. Two of them, however, are specially notable: Islamic Centre of North America. Its address is: www.icna.org., the other one being: www.muslims.net. What you need is to contact them and tell your ends and objective to them. In addition to the above mentioned facilities, numerous forums have been formed to give a wider publicity to the Islamic forum, *Hadith* forum, *Fiqh* forum, *sunnah* forum, political forum, women forum etc., to name just a few. If you have any question, want to give advice to the associated people or wish to express your views on a certain topic, you may join the concerned forum. Weekly Islamic information quizzes are conducted regularly on the Internet. Many Islamic organizations have a strong presence on the Net and are devotely serving the cause of Islam. A few of them are mentioned here:

- Islamic Society of North America (Isna)
- Islamic Association of Palestine
- Qur'an and *sunnah* Society (Michigan)
- Islamic Foundation for Education & Welfare, Sydney, Australia
- Islamic Centre of Peters Burg
- Islamic Research Foundation (Markaze Adab-o-Sicience, Ranchi)

Apart from serving the cause of Islam very actively, they are always prepared to render every possible help and provide space for launching home page and websites with the intent of serving the cause of Islam and

thus share their job ot furthering the Islamic cause.

Negative aspects of the Internet

Respected audience! Thus far we have seen only the positive and useful aspects of the Internet. But, unfortunately, its negative effects are by no way less alarming. The destructive hands and morally corrupt elements of the society are making its maximum use to demolish the whole moral and the social structure of mankind. Being the men of the Islamic learning, responsible for upholding the religious and spiritual values of Islam, you are obliged to know and assess the range and extent of the negative and destructive effects of the Internet. In other words, as the Internet is a great and valuable instrument for furthering the cause of Islam holding very good promises in so far as the communication of the message of Islam and the Islamic teachings is concerned, so threatening are its destructive effects. Apart from its use for constructive purposes, it is being widely applied to corrupt the traditional and religious moral concepts and deprave the human societies. Under the highly destructive effects of the Internet, whole the world is reeling, particularly the European countries and America. To make you assess the extent of the moral corruption the following real example must serve as an eye-opener. A British woman lived with her younger girl not yet of twelve years old. Associated with an outdoor job, the woman had to depart from her home every morning. During the hours of her absence, her said girl would often

browse the Internet. The woman was very happy to know that her younger daughter was able to make so effective use of the Internet and computer as to collect very much information from the Internet. One day the younger girl uttered a word in presence of her mother which was quite unfamiliar to the people leading a morally oriented life. The word, on the other hand, was in common use of the world which stands immersed with depravity and sexual anarchy. It was too much for her, and she was alarmed. One day the woman decided to return to her home before time. To her surprise, she saw her tender-aged daughter seeing the sites which are notorious for sexual anarchy.

Another similar event which also took place in the same country (Britannia) is that a higher police officer received an e-mailed tip from an anonymous person who had informed the officer of the shameful reality that a racket of sexual abuse had actively been run by some deprave elements. Acting on the tip, the police officer chased the racketeers and gathered the knowledge of their ways of working and of the sites and computers in the use of the racketeers. Again, to our surprise, the children involved in that evil racket mostly belonged to so-called educated and cultural households.

The questions which we are facing now is how to stem the tide of the evils which is engulfing the human society due to the misuse of the Internet? How could we save our society, our households and our younger generations from the undesired effects of the Net?

From among the questions raised during the previous session one was 'if we are able to block such sites which pose a real and serious threat to our moral fiber?' In fact, technically it is not difficult to block any site which you don't want to visit. The problem is only normative. The so-called developed European and Western countries are not prepared to put any check on the flow of the knowledge apart from its possible good or evil effects. These countries have reached a general consensus not to impede the flow of knowledge on the Internet. They adhere to the norm of complete and unlimited liberty in the communication and acquisition of knowledge, whatever the nature of it might be. The more liberal you are in connection with knowledge, the more successful you are. This liberal attitude towards the acquisition of knowledge offers the strongest opposition to the move of checking or blocking such undesired sites. Still, there are many Internet service providers, in India as well as outside, who have blocked all such sites in their servers and nobody is now able to visit them. If you, likewise, have your own Internet connection, in the software of the computer you are connected with there exists a small option. Going into that option you may block all the immoral sites. Then no individual of your household shall be able to access to such sites.

So far the question of pictures in the Internet, which has already been debated well in the earlier session, is concerned, it is totally up to you either to use the pictures or put out the option of it. In the Internet

system you have both the options. You may browse the Net without using the picture option, and you then will have the information in the form of text only, and in the place of the pictures there will develop an empty block.

You must bear in mind the fact that in the next few years the Internet is going to exercise even enormous effects on all aspects of the human life and effect profound changes in the modes of living. Whole the educational and academic edifice is being structured along the Internet, and as a result, all the educational and academic activities shall be connected to the computer and Internet. Under such pressing circumstances it will be prudent to allow the use of the Internet for positive purposes on one hand, and discourage its use for negative and destructive ends. Obscene items have to be removed as far as possible. The Internet has transformed all the things into digits and the computer understands the digital language only. In fact the computer and the Internet is wholly the play of the ZERO and DIGITS. Thanks to the computer-brought revolution, whole the knowledge of the world is dancing to the tune of our finger tips. With the newer researches, the Internet has turned an all-in-one instrument; telephone, fax and the TV have combined into it very effectively. It is very likely that during the next decade almost every household will have the Internet facility like the television sets, which were very rarely seen some years ago, but now no house is without it, even there might be more than one.

The biggest challenge we are facing, however, is to stem the tide of the obscene culture and immorality brought about by the Internet culture. With a view to make you deliberate the enormity of the challenge, I would like to end my talk with a valuable article published in a magazine.

> "Let's ponder the question 'should we accept the prosperity and progress brought about by the modern information technology, computer and the Internet *per se*, as propagated by the West or we the Muslims, with unflinching belief in Divine Realities, have to assess the positive and negative sides of it? To the ideology of Islam, the real source of all types of knowledge is only Allah, the Creator and Originator of the universe. It is He Who taught the names of all things to Adam, the first man. So a Believer is essentially required to assess and critically examine all the aspects of every sort of knowledge, technological advancement and the results of every academic research subjecting them to the criterion offered to him by Islam. Could we afford to exclude the possibility that this rising tune of the overuse of the computer and Internet system and accepting readily the results borne out by these scientific inventions might totally render man dependent on the automation and logic; and that the unbridled craze for gathering the knowledge and information from computer may sweep away our religious and moral concepts, corrupting the social and moral fiber of the human societies? Undeniably, the current flood of knowledge gathered from the computer and Net is bringing to your home a far greater

quantity of the useless, obscene material too bad to be imagined and brooked by a virtuous and God-fearing human society. The Internet stands infested with the material, obscene pictures and deprave literature which has badly shaken even the Western society. The challenge posed by this technological advancement still remains unmet. It is feared that the Internet might evolve into a world wide evilful net bringing millions of households to the brink of irreparable moral destruction and ruin. It is because of the fact that the informational revolution has now turned into the informational warfare.

"The Internet in fact was invented by America with the view to have a communicational system able to retain its normal functioning even when the country is under the nuclear attack. Precisely speaking, the Internet was in fact a defense project of America during the seventh decade of the last century, under taken specially with a threat perception from the Union Soviet Socialist Republic. Afterwards when the USSR collapsed and lost its status as a world super military power, the American scientists began to develop this marvelous invention into a tool to further America's economic and educational objectives worldwide. As a result, today whole the communicational system and the information technology stand connected with the worldwide computer network. However, its inconceivably destructive aspect, as a noted Muslim thinker has pointed, is that any country of the world may inflict an irreparable destruction upon its enemy country without firing a single a bullet. What he has to do for the purpose in merely to en-

ter virus in to the enemy country's Internet, computer network and similar other crucial electronic systems to corrupt and destroy its arranged informational data within minutes, thereby rendering it impotent to withstand any military attack. But such an info-war and electronic aggression could be undertaken only against the countries like America and other developed ones, the total informational and military systems of which rest on the latest advanced information technology. To the opinion of their men of thinking a successful defense against such possibilities is to equip their opponents with similar advanced information technology so that they may too entertain fears and apprehensions on an equal footing in case a war breaks out between them. It will be foolish to naively overlook the real motives and intentions of America behind its move to equip other countries, particularly the Muslim ones, with the advanced information technology. The fact that most countries of the world are welcoming this American move submissively is quite alarming. The present state of things calls upon the men of Islamic learning and the policy-makers of the free sovereign Islamic State to seriously ponder over the nature and scope of this challenge on the ways how to meet it effectively. A true believer can not ignore the fast-deteriorating social conditions, the overturning of the social and familial traditions. Can we exclude the possibility that all these social evils are taking place thanks to the present advanced information technology, Internet and the communicative network? The men of Islamic knowledge and prudence can't afford to ignore the

fears and apprehensions of heresy and atheism which, in all probability, may result from man's submission to the ascendancy of science and technology as such a concept of ascendancy will hardly leave any room for a belief in the super human Supreme Being and to accept it as man's Creator and Master technology-based social system will hardly have any place for spiritualism and high moral and social values. In a world where man has largely become dependent on automation and machines, the biggest challenge before the Muslim scientists, *Ulama* and the men of thinking is to tame the modern scientific advancements in a way to make them strengthen the belief in Allah and other religious Realities. Only this way they will be playing a positive, constructive role in building a virtuous society."

Hakim Zillur Rahman puts question

Does not there exist a command control or a central system of the Internet to control its misuse?

Tariq Sajjad answers

This is a good and natural question. As I stated in the morning session, the Internet has no central command in terms of ownership. Almost all the servers lie in America and handled mainly by the American scientists. Yet, the US government is obliged to follow the policy made in connection with the Internet by the international community. The fundamental principle in this regard is not to check the flow of the infor-

mation. No country, therefore, is allowed to check the flow of information or impede it by way of enacting laws in this regard. Doing so will amount to infringing upon the norms made in this regard. If any country blocks the satellites of other countries, they too will retaliate in kind, thus rendering the fundamental principle meaningless. What could be done in this regard at most by the Internet connection providers at most only to black the obscene sites under the areas of their services?

Hakim Zillur Rahman seeks further clarification

You have just said that almost all the bigger servers are in America an America too is deeply anxious about the social evils and moral vices brought about to the American society by the Internet and the uncontrolled flow of useful stock of information. If it is the case, the Americans must feel obliged to recognize the need of a central command of the Internet. But there exists no. Is it not very surprising? Does it stand to reason to leave unchecked all sorts of information even the harmful one?

Tariq Sajjad answers

No doubt the US government and the Western countries are deeply concerned at the harmful effects of the Internet on the society; they also have the technological capacity to make a command control system, yet it is an irony that they have adopted no practical

measures in this regard. It the government thinks to adopt measures to control the unchecked flow of the useful and harmful information via the Internet a fierce opposition is offered by the so-called thinkers and the intelligentsia, who begin to tirelessly clamor for the freedom of information. Admittedly, there rose many moves demanding the complete blockage of all such sites which are casting very evilful and destructive effects on the American and Western societies, yet the strong opposition on the part of the intelligentsia again rendered the government unable to take steps in this regard.

بسم الله الرحمن الرحيم

Concluding marriage and business transactions through Internet and other modern systems of communication

Questionnaire

Introduction

All the transactions and dealings involving defrayal, pecuniary or otherwise, could be conducted only on the basis of *mutual consent* expressed through *offer and acceptance*. Keeping in view the importance of the offer and acceptance, the Islamic jurisprudents have accorded fundamental import to it in connection with the proper holding of mutual transactions.

While *ijaab* (offer) stands for making an offer by a party, the *qubool* (acceptance) means accepting of that offer on the part of the second one. As a matter of rule, the event of offer and acceptance must occur in the same time. To some jurisprudents the contemporaneity of offer and acceptance is a condition for the validity of the transaction. To explain the point, the acceptance has to follow the offer immediately. The Hanafi jurisprudents, however, regard this condition as very difficult to comply in many cases. So, to them the concurrence of the event of offer and acceptance may be of two kinds: (a) actual contemporaneity; the realization

ot it shall only be possible it the otter is immediately followed by acceptance. (b) Implied contemporaneity. This covers the situation when the offer is followed by the acceptance in the very sitting in which the offer was made but the acceptance does not immediately follow the offer. The acceptance, however, takes place before the sitting comes to an end. Because of the sameness of the sitting this sort of the dealing is also as much acceptable to the *Shariah* as that of the actual contemporaneity, and the minor gap involved is not considered.

In consideration to this provision, *the sameness of the place of holding the transaction or marriage* is held to be a condition. That is to say, the *offer* and the *acceptance* must take place in the same *meeting*. This condition gives rise to questions like if the transactors are traveling in a boat or in a running train, etc. and the offer and acceptance take place, will such a transaction or marriage contract be valid?

Likewise, in the Shafai jurisprudence it is also a point of discussion whether a transaction or marriage shall be valid if the act of offer and acceptance takes place between both the parties talking to each other from a distance in an open place like jungle, and whether the separation of the transacting parties by a barrier like the wall or canal will be harmful to the sameness of the sitting and transaction place.

In short, the concept of the sameness of the sitting holds special significance in so far as the realization of the business and marriage transactions. Obvi-

ously, the sameness ot the sitting was considered a condition for the realization and effectiveness of the transactions to ensure that the acceptance of the transaction or marriage proposal takes place immediately after the offer is made. But the point to be considered is that the condition of the sameness of the place of meeting for transactions and marriage was intended only to ensure that no time gap occurs between the offer and acceptance taking place between the transacting parties, because, unlike the present age of advanced technology, in the earlier eyes, when the Islamic jurisprudence was undergoing its formation process, it was quite unthinkable that the acceptance might immediately follow the offer.

Now the technological advancement and invention of the marvelous systems of communication and information has virtually transformed whole the world into a home. Today we are able to effectively communicate with a person sitting thousands of miles away from us. Through the help of the telephone, Internet, etc. we now are able to make transactions even though the second party stands thousands of miles away from us.

Moreover, since the modern systems of communication have improved the connectivity beyond imagination, the scope of business, both on national and international levels, stands widened. Through the Internet and other similar systems it is fully possible for the second party to accept the offer and express his consent immediately after the first party made the of-

ter even it the transacting parties are thousands ot miles away from each other.

Print outs of the transaction documents may also be sent to the second party by way of Internet. Likewise, the second party may send its reply as soon as it received the offer. However, despite facilitating instant connectivity between the transacting parties, the Internet can't undo the spacial distance between the parties. Therefore this remains to be considered whether the sameness of the sitting of the parties is for its own sake or it is the time connectivity between the offer and acceptance which is primarily intended by the sameness of the meeting point. This situation gives rise to the following questions which need answers:

1. What is meant by the *majlis* (sitting) and by the sameness of the sitting or difference of sitting?
2. Shall a business transaction held via the Internet be valid from the Sharia viewpoint?
3. If the marriage offer and acceptance on the Internet is witnessed and monitored by two witnesses, will such an offer and acceptance suffice for the validity of the marriage?
4. Besides considering the normal aspects of the sale and purchase on the Net, there might be other aspects which also deserve consideration. For example, a third person may get access to the two-party business details and thus may earn more benefit than the actual transactors. The question is: will it be right for a third party to do so?

5. What is the Sharia position on the business transactions held by the video conferencing? Notably, the video conferencing not just enables the transacting parties talk to each other, even they see each other quite clearly. More importantly, the detail of the whole video conferencing and online dealings is fully recorded and saved, always open to be accessed by the parties any time.
6. What about the business transactions by telephoning?
7. Could the nikaah be contracted on the telephone? In other words, shall the marriage offer and acceptance made on the telephone be valid from the Sharia viewpoint? And, likewise, if the offer and acceptance made by the parties are witnessed by two witnesses who are hearing the words of offer and acceptance, will the transactors and the witnesses be considered sharing the same sitting? In case the offer and acceptance on telephone are not sufficient for contracting the marriage, could the nikaah be held on telephone by proxy? If so, what would be the possible sort of contracting it?

The above seven are the questions which constituted the questionnaire furnished to the *ulama* in India and abroad.

Concluding transactions and marriage through modern systems of communication

Decisions

(Following are the decisions at which the Islamic Fiqh Academy of India arrived after a prolonged written and oral discussion and the exchange of views from the ulama on international level.)

1. The term *majlis* (sitting) stands for the state in which the transactors conduct their transaction. While the sameness of the *majlis* is intended to bring the contemporaneity between the offer and acceptance, the difference of sittings shall be applied to cover the state of transaction in which the contemporaneity of the time of offer and acceptance is missing.
2. (a) In business transactions the offer and acceptance made by telephone or video conferencing shall be valid. Likewise, if the transacting parties exist on the Net at the same time and the offer is immediately followed by the acceptance on the part of the other party, the transaction shall be considered valid and the transactors to be sharing the same *majlis*.

(b) If the offer is made on the Net by the first party

and the second party was not available on the other side of the Net and thus he received the offer later, the latter shall be required to accept it (if he so wishes) as soon as he/she read the offer. This way of transaction shall be considered the one taking place by way of correspondence.

3. If the seller and the purchaser used a secret code to maintain secrecy about their transaction, it will be quite unlawful for a third person to try to gain access to the details of the transaction. Getting access to a secret transaction may be right only if it is feared to suppress any one's right to preemption or any other legal right of any one else's.
4. The matter of *nikaah* is subtler than the business transactions. For it involves an aspect of worship, and requires two witnesses. So, the *nikaah* and its offer and acceptance can't be conducted on the Net, phone or videoconferencing. However an agent may be appointed through the party, who will accept the offer on behalf of his/her client in presence of two witnesses. The witnesses must be acquainted with the non-present client. Or, his/her name be mentioned with his/her parentage at the time the offer and acceptance are made.

Conluding marriage and business transactions through modern systems of communications

Exposition of the theme
and
abstracts of the answers received in reply to the questionnaire

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The questionnaire furnished to the Ulama and Islamic scholars with respect to conducting the business transactions and marriage through Internet and other modern systems of communication primarily centers round three points:

Firstly, what is meant by the unity and disunity of the sitting from the technical point of view and for what it is intended? This point holds special import because of that the term *majlis* (sitting) has been accorded very much significance with its repeated mention in the perspective of conducting business transactions. The unity or disunity of the *majlis* directly affects the offer and acceptance. Hence this question)

Secondly, the position of Islamic *shariah* on the use of Internet as well as other advanced systems of communication to conduct business transactions.

Thirdly, what is the position of the *shariah* on conducting marriage through Internet, telephone and video conferencing? Although the questions are separate, it, however, seems fit to put here the gist of the papers received in response to the questionnaire and their arguments according to the sequence of the questions.

Majlis (sitting) and its sameness and otherness

As far as the sameness or otherness of the sitting is concerned, it is obviously related to the terminological definition of the *majlis* (sitting) itself. Concerning the definition of the *majlis* there are two viewpoints. The first defines the *majlis* to be the sameness of place of meeting of the transacting parties. So have viewed the following scholars:

Mufti Zakir Hasan Nomani
Ml. Abu Sufyan Miftahi
Ml. Bahauddin (Kerala)
Ml. Mustafa Qasmi
Ml. Asrarul Haq Sabili
Ml. Abdul Rahim (Kashmir)
Ml. Niyaz Ahmad
Abdul Hamid (of Tayyib pur).

Maulana. Abul Ass Wahidi too seems to favour the same view. According to this view, the sameness of the *majlis* means that the place of offer and acceptance

should be the same, and atter the expression ot the acceptance nothing should follow implying the contrary. This view is predicated upon the juristic expressions which clearly employ the term *majlis* (sitting) and *makaan* (place).

To explain this point Ml. Asrarul Haq Sabili has cites some juristic expressions speaking of that the otherness of the sitting shall be referred to the common accepted usage of the people. Ml. Nayaaz Ahmad Tayyib Puri has cited the narration of Abdullah bin Umar, often cited by scholars to establish the right to discretion of *majlis,* to argue in favour of the view. The argument is based on that the narration contains the word *tafarraqa* (separation), and most jurisprudents have gone to interpret the separation to be the physical separation of the transacting parties.

The other viewpoint, on the other hand, is that the *majlis* is the state in which the event of offer and acceptance takes place aside from the fact that the transactors happen to share the same *majlis* or be in separate *majlises.* According to the adherents of this view, the sameness of the *majlis* means a time connectivity between the *offer* and *acceptance.* Otherness of the *majlis,* on the contrary, is applied to the lack of time connectivity between the offer and acceptance. To use another expression, the sameness or otherness of the *majlis* is based on the time connectivity between the offer and acceptance rather than the physical existence of the transacting parties on the same place. This view is held by the following *Ulama:*

Ml. Atiq Ahmad (of Basti)
Ml. Muhammad Azami
Dr. Abdul Azim Islahi
Dr. S. Qudratullah Baqvi
Mufti Shaukat Qasmi
Ml. Khalid Saifullah Rahmani

Ml. Md Nafie Arifi, Ml. Mujtaba Hasan Qasmi and Ml. Md Umar Abidin Qasmi (all scholars in the department of Specialization in Jurisprudence, Hyderabad) too subscribe to the same view. Ml. Ubaidullah Asadi holds that the concept of *majlis* requires neither sameness of place nor the sameness of the time. It, rather, implies the knowledge and awareness between the transacting parties. On the face it, this view seems different from both the views put above, yet the explanation of the view, furnished by the Maulana himself, establishes that it is much closer to the second viewpoint.

As far as the base of the second viewpoint is concerned, Ml. Atiq Ahmad has argued with the juristic principle: *Correspondence is like speaking to the second party*. Ml. Khursheed Ahmad Azami and Ml. Muhammad Azami have based their contention on the expressions of Dr. Mustafa Zarqa and Dr. Wahba Zuhaili which define the sitting of transaction (*majlise aqd*) as: *the majlis of transaction is the state in which the transactors existed while carrying out the transaction practically*. Similarly, Ml. Md. Shaukat Qasmi has cited the following text from al-Bahrur Raiq:

"The sameness of *majlis* is required in making the

offer and its acceptance rather than the *majlis* of the transactors."

Ml. Md. Nafie Arifi and Ml. Md. Umar Abideen have based their argument on the following words which occur in Fathul Qadeer, Bahrul Raiq, Shami etc.

"The condition for the sameness of the *majlis* is the sameness of time (of offer and acceptance."

As far as I think, the second viewpoint concerning the definition of *majlis* and its sameness and otherness is more correct and consistent with the fundamental principles of the Islamic *Shariah*. The following points might be offered as indicative of this viewpoint:

1. According to the express statements of the Qur'an and *Sunnah* the mutual agreement of the transacting parties is the prerequisite for a transaction. To quote here the words of the Qur'an:

يا أيها الذين آمنوا لا تأكلوا أموالكم بينكم بالباطل ، إلا أن تكون تجارة عن تراض منكم .

"O those who believe, eat not up your property among yourselves in vanities: but let there be amongst you traffic and trade by mutual consent." (4:29)

Since the consent is the act of the human heart, with no direct access to it by anyone else, the Muslim jurisprudents have derived three important points from the above cited verse. First, one party should make the offer. Second, the second party should express his/her consent in respect of the offer made. Third, the use of the verb implying mutual agreement in the *ayat* amply speaks of that there must be a time relatedness between the offer and its acceptance. Dur-

ing the past ages it was quite unimaginable to think ot the time relatedness between the offer and acceptance unless the place of offer and acceptance was the same. Hence the foregoing jurisprudents expressed the sameness of the point of meeting as the only option to ensure the time relatedness between the offer and acceptance. As far as the Qur'an and *Hadith* are concerned, there is hardly anything to especially mention the sameness of the point of meeting as condition for the time relatedness between offer and acceptance. Obviously, it will be quite imprudent for the *ulama* to keep themselves restricted only to the traditional means and systems. Instead, they shall be required to employ the contemporary, advanced systems to attain the objectives of the Islamic *Sharia*. In the present age we possess such advanced systems of communication which are capable of bringing into effect the time relatedness between the offer and acceptance in spite of the difference of the *majlises*. Therefore, now there seems no need to hold the sameness of the place of meeting as a condition for the realization of time relatedness between the offer and acceptance.

2. There are more than one juristic expression which say that the main point is the time relatedness between the offer and acceptance. discussing a similar problem, Allama Shami syas:

"... The condition for the sameness of the *majlis* is the time unity."

Similarly, talking about transacting by letter and correspondence, Ibne Nujaim (of Egypt) writes:

"The unity of *majlis* is that the transactors are pre-

sent and the event ot otter and acceptance takes place in single *majlis* in the way that there is a time unity between the *majlis* of offer and acceptance rather than that of the transactors themselves. For the pre-requite for the relatedness between the two events is the time unity. For the sake of ease for both the transactors the *majlis* is held to be the place of union of the transacting parties."[1]

3. In the juridical literature we came across the expressions maintaining the sameness of the *majlis* despite there is an obvious difference between place of offer and acceptance. For instance, if two persons walking on foot or traveling by a conveyance inter into a transaction and one party makes offer and the second party, which has naturally moved out of the first place, accepts it, the transaction shall come into being. To the same point has pointed Ibne Hammam in his following words:

"Undoubtedly, if both the transactors are walking, the acceptance of the offer will occur on a place indubitably different from the first place." [2]

A similar point is also worth consideration. If a party happens to be inside the room while the second one on the roof, and then occurs the offer and acceptance between the two, the business transaction will come into effect, if the place distance causes no ambiguity of speech between the two.

"The transaction will come into effect if both the

[1] al-Bahrur Raiq 3/83.

[2] Fathul Qadeer 5/461

> parties are seeing each other and there is no fear of ambiguity of speech to be exchanged between the two parties." [1]

The offer and acceptance will be considered valid even if a not much bigger canal occurs between the two parties.

Having cited many examples of the kind, Ibne Nujaim comments on the point as follows:

> "In situations like these my opinion is that if the place distance is not feared to cause ambiguity of speech between the transacting parties, the transaction will come into effect. If otherwise, the transaction shall be held void."[2]

Since in the earlier times it was too difficult to think of a place distance to maintain the time unity different from the ones mentioned in the examples put above, the foregoing jurisprudents could not go beyond their contemporary situations. Still, these examples are enough to establish that the condition of the unity of place for offer and acceptance is neither expressed by the *shariah,* nor it is an objective of the *sharia* in itself. In fact, what is required is to ensure the mutual agreement of the transacting parties, and for the same reason the earlier jurisprudents, purely out of their inference, had defined the *majlis* keeping in view their contemporary situations. Otherwise, it stands already established that the transaction may take place even if the place of offer is different from that of accep-

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[1] al-Bahrul Raiq 5/454

[2] al-Bahrul Raiq 5/454

tance.

Keeping those facts in mind, it is recommended to hold the transactions the offer and acceptance of which takes place in the same time but not at the same sitting as valid. For it is quite possible today to maintain the unity of time between the offer and acceptance without that the parties are found physically in the same *majlis*.

Concluding business transactions on Internet, video and telephone

The second problem is related to the use of modern advanced systems of communication for conducting the marriage and business transactions. This problem has been subdivided into four questions: First, could the business transactions be conducted through the Internet? Second, could the business transactions be conducted through videoconferencing? Third, what about conducting business transactions by telephone? Fourth, is it lawful for a third person to make secret access to the details of the transaction which has taken place between two parties?

So far as the sale and purchase through the Internet is concerned, Ml. Niyaz Ahmad (of Tayyabpur) tends to the unlawfulness of it chiefly because it is prone to deception. The rest participants, however, are agreed on the lawfulness of conducting business transaction through Internet, some out of them put conditions though. Ml. Muhammad Azami holds that there must appear full addresses of the transacting parties on the business documents and the documents must be signed by the transactors. Ml. Abdur Rahim Kashmiri has opined that the transactors must recognize each other. Otherwise the transaction shall not be

valid. To Ml. Abul Ass Wahidi, Internet transactions are quite valid provided there is no fear of deception and defrauding. Dr. S. Qudratullah is of the view that the transaction shall be lawful only if it is based on the certified documents. Mr. Umar Afzal (of USA) has expressed that such a transaction carries full legal bearing.

According to the opinion of Ml. Ubaidullah Asadi, Mufti Shaukat Ali Qasmi and Ml. Asrarul Haq Sabili, conducting the business transactions through the Internet facility is the same as doing through writing. That is, the acceptance shall have to be expressed as soon as the second party receives the offer document from the first one, and that sitting shall be regarded as of the offer and acceptance. Ml. Atiq Ahmad Bastawi holds that as soon as one party made offer on the Net, the second party will be required to express his acceptance and approval on the other side so as to maintain the unity of time between both the events. To the opinion of Ml. Mujtaba Hasan Qasmi and the writer of these lines, the offer and acceptance might be of two sorts: one is that both the parties happen to be present on the Net at both ends. If so, the second party will be required to accept the offer immediately. For such an offer and acceptance is very much similar to that of the face to face. The other is that the first party made the offer on the Net but the second one is not available on the other end. In such a case, the second party shall be required to react to the offer as soon as he/she received it. In fact the second sort is almost the

same as ot that taking place between two non-present transactors.

The view of Ml. Ubaidullah Asadi, Mufti Shaukat Ali Qasmi and Ml. Asrarul Haq Sabili is principally based on the juridical fact that the business transactions may as much be carried out by correspondence as by mutual talk, as the jurisprudents have expressed in detail. To my opinion it is important to keep in mind the difference between transacting face-to—face and by way of correspondence, the two possible sorts of transaction on the Net. As far the fear of deception, the adherents to the view of the validity of the Internet transactions too must have considered the point. If the fear of deception is more likely, the transaction will not be lawful. As it is known, both the transactors on the Net may get substantial identity of each other as well as the required details about the item to be sold and purchased through the Net itself. Through the Net itself the first party may ascertain whether there exists the required balance in the bank account of the party. Even the act of defrayal too may be carried out by the Net. In short, the Internet facilitates complete access to every detail of the transaction conducted. So, it goes without saying that no business transaction on the Net could be held acceptable to the *Sharia* as long as the occurrence of dupery is likely.

So far as the offer and acceptance through the video conferencing is concerned, all the participants, excepting Ml. Abdur Rahim of Kashmir, hold it lawfully valid. Their base arguments are much

the same, that is, both the parties shall be considered to be sharing the single sitting, as both are able to see and talk to each other, even though they happen to be physically in different places. Some other scholars, however, tend to explain it in terms of transaction by writing. So, there is no need at all for the transactors to attend the same sitting. Such a condition is applicable only in holding the transaction face-to-face. In the opinion of these *ulama* and scholars holding the business transaction through video conferencing is more akin to transacting by correspondence rather than that of face-to-face.

As for Ml. Abdur Rahim Kashiri's viewpoint, it is primarily predicated on the assumption that the video has been invented chiefly for the sake of *fun and entertainment*. Hence unfit to be employed to carryout lawful business transactions. However, on consideration it will appear that this contention bears no connection with the question in hand. This is a different question whether it is lawful to use the video and videophone or not. The question here is to determine the validity or otherwise of the transaction thus made. On the face of it, the transactions should be legally effective as it facilitates a full connectivity between the offer and acceptance.

So far as the sale transaction by telephone are concerned, all the participants and the writers are unanimous in their opinion that such a sale transaction shall be fully valid. The supportive

argument is that the sale transactions may as much be established by way of writing in absence of one party as by attending the sitting of transaction. It is of course not a precondition for the validity of the business transactions that the parties essentially sit face to face. To support this viewpoint Ml. Ubaidullah Asa'di has cited a *fatwa* of the late Mufti Mahmood Hasan. Yet, to many other contributors the parties must recognize the voices of each other. Ml. Abdul Rahim of Kashmir and Ml. Bahauddin of Kerala are of the view that the parties must be familiar with each other. In the view of Ml. Niyaz Ahmad it is essential that the buyer see the item on sale before buying it and finalizing the deal. In short, the sale and purchase deals might be finalized on the telephone. For it facilitates the time connectivity between the offer and acceptance of the item on sale, in spite of the difference of sitting and place. It is therefore observed that the business transaction conducted on the telephone carry the full validity from the *shariat* point of view, provided all other conditions regarding the sale and price are properly met.

The third question is whether it is right for a third person to make un-permitted secret access to the details of the business transaction which has taken place between two parties. There are two different viewpoints' regarding this question. Ml. Abu Sufyan Miftahi, Ml. Abul Ass Wahidi, Ml. Shaukat Qasmi and

Ml. Mufti Zakir Husain see no legal problem with it. Arguing for this view, Ml. Abul Ass Wahidi observes that it is no more than benefiting from one's own experience and ability and therefore no reason to hold it unlawful. Contrariwise, Ml. Ubaidullah As'adi, Ml. Khursheed Ahmad Azami and Ml. Muhammad Ahmad Azami hold so doing as lawful provided that it is not feared to harm the interests of the transacting parties. Ml. Baharuddin of Kerala, augmenting with the hadith *baiun ala baie akhili* (doing so in fact is a sort of selling on the sale of his brother), has observed that a third party may do so before the finalization of the deal between the parties. If the deal is final, no third person is permissible to pry into the secret details of the deal. The scholars who are against such permission contend that this is a sort of spying on others which is strictly forbidden by Allah. My opinion is that if the parties have employed the code language to maintain secrecy, it shall not be permissible for a third person to make access to the details of the deal. Such an act will indubitably constitute at once the act of spying, embezzlement and of theft of the transactors' preserved secrets. The following *hadith* is a clear indication against such immoral acts.

Abu Hurairah reported the Holy Prophet (SAWS) to have said:

"If a person peeped inside the house of a people, they have the right to gouge out his eyes." [1]

This hadith unambiguously outlaws the viola-

[1] Sahih Muslim

tion ot other people's private matters which include somebody's secret information on the Net.

Nikah on Internet and telephone:

The third problem is whether the *Sharia* permits to conduct the marriage through the Internet and telephone. As to this question the writers and the participators stand divided into two groups, holding two different views. While Ml. Ubaidullah Asa'di, Ml. Mustafa Qasmi, Ml. Khurshid Ahmad Azami, Dr. Abdul Azim Islahi, Dr. S. Qudratullah Baqwi, Ml. Md. Nafie Arifi, Ml. Md. Umar Abideen Qasmi and Ml. Md. Zakaria Husami are of the view which holds the *nikaah* on the Internet or phone to be valid, the other group of scholars, comprising Ml. Atiq Ahmad Qasmi, Mufti Zakir Hussain, Ml. Abu Sufyan Miftahi, Ml. Md. Azami, Ml. S. Asrarul Haq Sabili, Ml. Niyaz Ahmad Abdul Hamid, Ml. Abul Ass Wahidi, Ml. Bahauddin (Kerala), Ml. Mujtaba Hasan Qasmi, Ml. Shaukat Qasmi and I (Khalid Saaifullah Rahmani), holds that the offer and acceptance of marriage can't be finalized on the Net or phone. Ml. Ubaidullah As'adi (of the first group) has also explained that holding *nikah* on the Net or telephone will essentially require that the two witnesses must be present with either one party. Otherwise, the *nikah* shall not be effective. A third view, adopted by Ml. Abdul Rahim (Kashmir), is that *nikah* on the Net or phone is permissible only if the circumstances are so coercive. However, the concept of coercion seems stranger enough in the context of *nikah* and

marriage.

The first group, which favours the lawfulness of the *nikah* on the Internet or telephone, bases its argumentation chiefly on the juridical wording occurring in the literature with reference to holding *nikah* by way of writing. There are many scholars with the viewpoint that lays stress on the time connectedness between the offer of marriage and its acceptance by the other party rather than on the sameness and unity of *majlis* of offer and consent. Since the Internet facilitates and instant connectivity between the parties during the same time and thus fulfills the condition of the sameness of *majlis*. Hence, the *nikah* thus conducted should be regarded valid.

To my opinion, however, it is not good enough to draw a similarity between the *nikaah* on the Net and the *nikah* by writing. For the *nikah* by way of writing in fact takes place through representation. Any party of marriage appoints somebody as his/her representative, who accepts the offer of *nikah* at his client's behest in presence of two witnesses. Thus the event of offer of marriage and its acceptance takes place in the same *majlis* in presence of the witnesses. The offer and acceptance on the Net, contrariwise, is apparently the sort of marriage coming into existence by a face-to-face proposal and acceptance. It is essentially untenable to apply the arguments for the marriage by representation to that coming into existence through the Net, if it is considered valid.

As for the point that the Internet facilitates the

unity ot sitting tor both the parties ot marriage and hence the *nikah* thus made should be hold valid, it is doubtful. For the *nikah* is far too sensitive an issue compared to other ones. Excepting marriage, all other things are primarily lawful until the law declares otherwise. But the human chastity is primarily prohibited for all unless it is permitted by the law. That is why the offer and its acceptance should essentially be attended by two witnesses who must hear the exchange of words of offer and consent uttered by the parties. It must be remembered that the condition of two witnesses for marriage has been expressly mentioned by the primary sources of the Islamic law and hence a unanimously agreed upon issue in the *ummah.* To cite here only two authorities.

> "The two witnesses must hear the words of both the parties at the same time." [1]
>
> "The provision (of the validity of marriage) is that it has to be held in presence of two free and responsible witnesses who may essentially hear the words of both the parties."[2]

Moreover, dependence on the Internet in the matter of offer and acceptance of marriage is often feared to be confused. Business transactions are naturally different from marriage. They are less feared to suffer confusion. Even if so happens, the damages may be repaired so easily as the business transactions are not so much sensitive as the marriage is. Furthermore,

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[1] Qazi Khan (on the footnotes of the Fatawa Alamgiri) vol.1/332
[2] Raddul Muhtar 4/84.

according to the Maliki, Shatai and Hanbali jurisprudents, marriage can't come into existence by way of writing and representation. But the business transactions may thus be conducted. Considering all these facts, it seems more accurate to say that the marriage on Internet alone shall not be valid and acceptable to the Islamic *Sharia't*. However, a representative of marriage may be appointed on behalf of either party to accept on the Net the marriage proposal at his/her client's behest in presence two witnesses.

The same viewpoint has been adopted by the majority of the participators and writers concerning the *nikah* by telephone, even if the instrument is so advanced as to facilitate the hearing of the offer and acceptance for the witnesses and the witnesses are present with either one party. Although the offer of marriage and its acceptance require only time connectivity yet the witnesses must attend physically the event of offer of marriage by one party and its acceptance by the other.

Contrary to this observation, there are many scholars who favour the validity of *nikah* carried out by telephone provided the instrument is HAND FREE the hearing on which may be shared by others side by side the direct hearer, and either one party is attended by the witnesses. The scholars subscribing to this viewpoint include the following:

1. Ml. Ubaidullah Asa'di
2. Ml. Md. Azami
3. Dr. Qudratullah Baqwi

4. Dr. Abdul Azim Islahi
5. Ml. Md. Nafei Arifi
6. Ml. Mujtaba Hasan Qasmi
7. Ml. Md. Umar Abideen Qasmi

These scholars too apply the argument of the *nikah* by writing to the *nikah* by phone, as do the supporters of the *nikah* on the Internet, and hence attracts the same objections. The *nikah* by an attorney may come into existence by telephone, fax, Internet or by any other system of communication. For the attorney speaks of the words of offer or acceptance (as the case may be) on behalf of his client and the witnesses may easily hear the words uttered by him, as required by the *shariat*. And, as the jurisprudents have expressed, if one party is not available at the sitting and has appointed an attorney to make the offer or accept it, the non-present party must be known and identified by the witnesses, either through their personal acquaintance with him/her or by way of mentioning his/her name with his/her parentage and address.

To cut the long story short, the modern advanced systems of communication are no more than the means and instruments. As far as the worship and the acts of devotion are concerned, the Law-giver himself has expressly mentioned their objectives as well as their way of doing. For both the things are directly intended. Therefore, they can't be subjected to any change or alteration. As for the business and other dealings, the *shariat* has not strictly defined the means and instruments to be employed leaving them to the human dis-

cretion. The objects, however, have specifically been mentioned. The former, quite obviously, is constantly subject to change and inventional development. But the objectives are set, never subject to change and alteration.

Moreover, it should also be kept in mind that *nikah* involves an aspect of worship side by side being a contract. Business transactions, on the other hand, purely deals with no aspect of worship. This subtle difference demands that the *nikah* be carried out with more scrupulousness and extra care than required for the business transactions.

Concluding Business deals through modern systems of communication

Dr. Wahaba Zuhaili

Introductory remarks

Today the pecuniary and other types of deals are being carried out by the help of the modern, advanced systems of communication like, telephone, telegraph, fax, telefax, Internet, wireless, etc. The increasing use of these systems has dictated the need to determine the position of the *shariat* on the deals and transactions thus carried out. In order to level the ground for a systemic discussion and arrive at a well-thought conclusion, I have kept before me most things mentioned by the great Islamic jurisprudents of the past. Since such things are commonly known to our university students and scholars, they will be mentioned only in brief.

Wording of transaction:

The words uttered by the transactors to finalize a business deal are meant to denote their inner intention and meaning. And their intentions, expressed through the words, replace the act of give and take, of pointing or writing. Thus the wording of transacting is nothing more than the offer and acceptance, which stands for their mutual agreement *vis-à-vis* the transaction. To the legal experts, the wording in fact is the expression of

the parties' inner intentions.

To finalize the deal every type of words denoting lexically or by usage the holding of the transaction may be employed, apart from that it involves words, act, indication or writing.[1] These words usually are *bi-etu* (I bought), *ishtaraitu* (I purchased), *rahantu/ ir-tahantu* (I mortgaged), *wahabtu* (I granted), *qabiltu* (I accepted), *tazawwajtu* or *zawwajtu* (I married). The act of giving and taking in fact is practically a mutual transaction and denotes the parties' mutual agreement without uttering the words of offer and acceptance.[2]

The purchaser pays the price and takes possession of the article. Practical transactions, i.e., without uttering formal words, irrespective of that the article is cheaper or valuable. Being in common use, this sort of transaction carries full legal weight according to the majority viewpoint. But the case of the marriage is entirely different; all the Islamic jurisprudents are unanimously agreed upon the fact that the marriage shall not come into existence only with practical pointers. The importance of marriage, its lasting effects on woman and the extraordinary importance of the chastity and honour all demand that the marriage must come into existence only by the expressed proposal from one party and its acceptance from the other one. Only deaf and dumb persons may establish their marriage contract by an intelligible pointing. The *Shariat* has granted this concession to such people in order to facilitate the right to marriage for them. This exception is based on the juridical principle:

"Intelligible signs of the deaf and dumb are like the statement by the tongue."[3]

To the Maliki and Hambali jurisprudents, the intelligible and usually common signs may establish the business deals as the signs are more denotative and meaningful than the act of give and take held by the jurists to be sufficient for the validity of the transaction.[4]

Dealing by writing

"Dealing by writing is like the dealing by speaking, [5]*"* is a juridical principle. According to the Hanafi and Maliki viewpoint, business deals may be conducted by writing apart from that the parties are able to speak or are speech-impaired, and whether they are sharing the same sitting or are located at different places. The language used should be intelligible to both the parties and the writing must be clear and readable, bearing the signature of the addresser, mentioning clearly the name and other identifying details of the addressee. In case the writing is not clear and readable as, for example, writing on water or air, or is written in an unfamiliar way or bears no signature of the addresser, [6] the transaction will not come into being. The following example will illustrate the way of dealing by writing: A person sent a letter to another to the effect that "I sold my car to you for the ...", and the second party received the letter and, after going through it, said, in the same sitting, "I accepted it", the transaction will be binding. But if he left the *sitting* without pronouncing

the word ot acceptance or made a gesture denoting non-acceptance, or accepted thereafter, the acceptance shall bear no legal effect.

Dealing by sending message:

If one party sends a message to another making the offer and proposal, such a message shall be considered like the letter. The sitting in which the latter received the message shall be regarded to be the sitting of transaction, and the acceptance or otherwise must be expressed in the same sitting. If the second party left the sitting without reacting to the offer, the offer will automatically be rendered invalid. That is, the sitting to be considered is the one in which the party received the message. Let me illustrate it by an example: one party sends a person to another party to convey his message that he has sold his … to him for so and so price and after receiving the message the second party expressed his consent to the proposal in the same sitting; the deal will come into existence.

In fact, the task of a messenger is weaker than that of the attorney. While the messenger is charged only to convey the message of the sender, the attorney holds the transaction in his own words on behalf of his client. In the case of the free attorneyship the attorney will be required to follow the usual way. But in case of the attorneyship is restricted by the place, language, person, place of transaction, altering the transaction, etc, the transaction between the attorney and the second party shall take place in the words of the attorney

restricted to the formal restrictions of the profession of atorneyship. The attorney himself shall have to meet all the conditions and legal requirements. The envoy, on the other hand, is not restricted at all as his task is no more than the dispatching of the original message to the second party. The documents of transfer of the ownership shall be provided both to the client and the addressed alike.

As far as the *nikah* by writing in presence of both the parties in the same sitting is concerned, it could be held only if the parties are speech-impaired. It is because of the fact that the offer and consent of the *nikah* must be attended and heard by two just witnesses. The condition may well be met if the *nikah* is being carried out in the form of writing. To the Shafai and Hambali viewpoint any transaction could be conducted by writing only if the parties are not present in the sitting of transaction. Their presence in the sitting of transaction obviates the need of writing. The transactors' availability makes them able to execute their transaction by speaking, and therefore the transaction will not come into being without uttering the words of offer and consent by their tongues.[7]

Provisions of making offer and acceptance:

The jurisprudents have mentioned three provisions regarding the offer and acceptance. They are as follows: [8]

1. The words expressing the offer and acceptance of the transaction must be clear, with no ambiguity

whatsoever. To explain the point, the words to be employed for the purpose of making the offer of a business deal and its acceptance must clearly speak of the purpose, lexically or normally. Since the intention is an act of heart and the nature of transaction may differ from case to case in so far as its subject and details, the words employed should be decisive in their meaning and denotation so as to determine the nature of the transaction. Without this it would obviously be difficult to hold the transacting parties liable to the transaction. It is worth noting that there are no specific words to denote the transaction except marriage, which requires two witnesses or some specific transactions whose completion depends on taking possession, like trust, borrowing, mortgage, gift, loan, etc. It is because of the fact the expressional uniformity is not juridically required in transactions other than the exceptions just made; the meaning and intentions are considered rather than the outer shell of the words. So if 'gift' is used in place of exchange, the transaction of sale and purchase shall be right and like wise, the marriage contract may come into existence even if the 'gift' is used, provided the dower is given away to the women.

2. The acceptance must accord with the offer in terms of the object of sale and the way of offering and in the quantity of prices to be paid in exchange of the item sold. Accordance between the

otter and acceptance might be either real or implicational. The real is that the buyer said "I sold that item to you for ten rupees", for example, and the second party responded, "I purchased it for ten rupees". As regards the implicational accordance, it is that the purchaser accepts the offer for a price more than the one mentioned and demanded by the seller. To take on example, the buyer said: "I bought that item for fifteen rupees", for example and the purchaser responded "I purchased that item for twenty rupees." Or, a woman says: "I gave myself to you in marriage for a dower of one hundred rupees", for instance, and the man responded: I accepted the marriage contract with you for one hundred and fifty rupees. Such an agreement between the offer and acceptance is termed implicational, because the price or the dower asked by the offering party falls implicationally under the sum mentioned by the second party. Although the implicational accordance, apparently disagreement, is a blessing, yet the purchaser shall not be held liable to pay the sum of money but the one originally demanded by the first party. So far as the extra sum is concerned, it shall entirely be up to the acceptance of the second party in the sitting of transaction. If first party accepted the expressed sum, the second party shall be liable to pay it. For no wealth or property falls under one's ownership except in the case of legacy.

This is the Hanafites' view. The Shafaites, on the other hand, hold that any discrepancy between the original wording of the offer and acceptance shall negate the. [9]

If the acceptance does not agree with the offer in terms of the object on sale, the transaction will bear no legal effect. To elaborate the point, if the seller said, 'I sold my so and so piece of land to you', but the second party responded, 'I accepted the piece of land located near it, or, 'I purchased a half of the land for half the price,' the sale deal will have no legal effect as the second party has treated the item on sale in pieces. The purchaser is never authorized to treat the item on sale as pieces accepting one piece and rejecting the others. Likewise, a discord between the transacting parties in terms of the quantity of price is liable to invalidate the deal. In the same way, if the discord is about the nature of the currency, for example, the buyer offered his item for the current value currency but the purchaser accepted the item for the later value currency, or, likewise, the buyer offered his item to take this price after one month but the purchaser accepted it for a period even later the deal will bear no legal effect. For the offer and acceptance lack the agreement, and the deal will require the fresh offer and acceptance.

3. The third provision is that the offer must immediately be followed by the acceptance, either in the same sitting as attended by both the parties or in the sitting in which the non-present party is familiar with the second party. Immediate con-

nectivity between the otter made by the and acceptance may also be realized in the way that the purchaser under stood words of offer and then nothing appeared from either side to suggest otherwise.

Sitting of Transaction

The term *sitting of transaction* is applied to the state where and when the transaction between the parties takes place, or to the state of the exchange of words between the parties regarding the deal. There are three conditions for the contemporaneity of offer with the acceptance:

(i) Both the parties attend the same sitting.

(ii) Neither party reveals his falling back from the deal.

(iii) The first party does not withdraw his/her offer before the second party's expressing of his/her acceptance.

Further explanation of these three conditions follows:

As far as the first condition is concerned, the offer and acceptance must be made in the same sitting. The offer shall form the part of the deal only if it is followed by the acceptance. If sitting of acceptance turned different from that of the offer, the deal shall not come into existence. For example, the first party addressed the purchaser as: "I sold/rented out this house for so and so", and then he moved away from the sitting to another room or to a distance as less as

two or three meters before the second party's acceptance, the first sitting shall be considered ended. Now, if the second party expressed his approval to the offer, the transaction will bear no legal effect. Now the deal will require fresh offer and acceptance to be made. For the words of offer lose their legal effect if not followed by acceptance in the same sitting.

Immediate acceptance

Excepting the Shafaites, the majority of the Islamic jurisprudents holds that the second party is not obliged to immediately express his approval of the offer of the first party. [10]

For, quite naturally, the second party is always in need of contemplation over all aspects of the deal. The condition of immediateness is bound to exclude every possibility of contemplation. The unity of sitting is just enough for this purpose, even though it is taken up to the last moment of its continuance. The sitting essentially includes various things; the condition of immediateness narrows down the latitude of deliberation for the second party and the deal will tend to lose without a substantial expediency. If he chooses to reject the deal, he is feared to deprive himself of the deal; and if he expresses his approval without due deliberation, he is feared to suffer a loss in the deal. The second party, therefore, has to be provided with a sufficient time to contemplate the possible positive and negative aspects of the deal. The term *sitting* is comprehensive enough to accommodate all such concepts. For the ease of the

people, and to avert the possible loss ot the transactors, whole the time of the sitting shall be regarded a single unit.

From among the Shafai jurisprudents al Ramali says:

"The offer must immediately be followed by acceptance. Even a shorter sentence related by no way to the transaction uttered by the purchaser, and will negate the contemporaneity between the offer and acceptance, and hence no transaction will take place. However, if the words like *bismillah, al-Hamdu lillah, as-Salatu was-salamu ala Rasoolillah* (meaning respectively: in the name of Allaah, all praise are due to Allah, blessing and peace be on the Messenger of Allah) precede the expression of acceptance and approval, the deal will come into effect." [11] Ramali's this observation is in line with the view which stresses the immediateness of approval against the offer. Other Shafaites, however, have defined the immediateness of approval against the offer to be according to the commonly accepted usage. It means that a slighter gap will do no harm to the deal; and it is the longer gap which is bound to harm the deal as it, in most cases, tends to backing out from the deal. This explanation brings the Shafai view much closer to the majority view.

The second condition means that nothing should appear from both the transactors between the offer and approval which might suggest to either party's turning back from the transaction. Both the parties are therefore required to strictly keep their talk around the

transaction itself, interrupting it with no word denotative of withdrawal. To explain it in other words, if the seller left the sitting before the expression of approval from the purchaser, or the second party left the sitting before the expression of approval; or both the parties engaged themselves in a thing related by no way to the transaction, - in all such cases the offer made by the first party shall turn invalid, and now even if the acceptance of the second party shall do no good to the deal. For the validity of offer entirely rests on the acceptance which has to follow it within the same sitting. The entire space of the sitting has been given to the parties to make the offer and acceptance within it so as to ease for them the difficulty they might otherwise have faced.

Change of Sitting:

So far as the sameness or the otherness of the sitting is concerned, it shall be decided in consonance with the people's commoner usage. The acceptance shall be regarded valid only if it occurred within the time frame of the same sitting; no sort of acceptance shall bear validity whatsoever if it is took place beyond the time frame of the sitting of offer. The rule established is that the offer shall be legally valid if it pronounced any time within the same sitting as long as there occurs nothing within the sitting which might denote the contrary. The Hanafites have exemplified this rule with that if a party made the offer, but the second party left the sitting before pronouncing his ac-

ceptance or engaged himselt in an activity which essentially denotes the change of the sitting and then pronounced acceptance, in such a case the transaction will be considered invalid. For one's standing up from the sitting obviously means that one has pulled oneself back from the deal. [12]

On the other hand, the Shafites, who adhere to the immediateness of acceptance, are of the opinion that the separation of the transacting parties shall be decided in accordance with the common usage of the people. For the things left undefined by the Shariat are referred to the common accepted usage.

To exemplify the separation, moving out of the second party from the house or room to the courtyard or doing vice versa, moving out from a small house to the road, climbing the roof, walking more steps than three (if the deal is being carried out while standing). However, if the transaction is being carried out while walking the sitting shall be considered the same even if it took much longer time as long as the talk centered round the transaction itself.

The third condition is that the acceptance must be pronounced before the first party's backing out of his offer. In case the approval was pronounced after the first party backed out from his offer, the approval shall carry no legal effect.

Backing out of the deal

Barring the Malikites, the majority of the jurisprudents hold that the first party has the right to back

out trom his otter betore the second party's expressing his approval of the offer. If so, the offer shall turn meaningless. The deal can't come into being if the offer is not followed by the approval. The first party is absolutely free to dispose of his/her possessions. The rights of ownership may be transferred to the second party only through the first party's expression of volition. Since the proprietary rights are far stronger than the transferred ones, and in the event of a contradiction between the two, the first shall prevail as they are absolutely proved, whereas the second party's rights are totally dependent on the first party's volition. In short, it is the mutual agreement of the parties on which rests the validity of the transactions. [13]

As for the Malikite standpoint, their majority holds that the first party shall be required to stick to his offer unless the second party turns away from expressing his approval or the sitting is over. They say that the first party's offer has proved a right to the second party against first party's possessions, and now it is up to him either to use or abandon his right. If he expresses his approval to the offer, the deal shall come into being, and if he stays away from acceptance, no transactions will take place. Therefore, backing out from the offer shall not invalidate the offer. [14]

Fixing the time for approval

According to the Malikites if the first party puts the second party on a specified term to express his approval, the latter shall be required to react within the

stipulated time. As it is put above, the Malikites don't allow the first party to back out from his offer on his own. He may do so only if the second party chooses to stay away from pronouncing his approval. Thus, stipulation of a time on the part of the first party will automatically make him stick to his offer. More succinctly, if the first party limits his offer by a specific time – hours, one day or more – he shall be required to stick to his commitment even if the sitting is over. Obviously, this falls under the general principle of the *Shariat* based on the saying of the Holy Prophet (SAWS) recorded by the Tirmizi and reported by Umar b. Auf, "Muslims must stick to their conditions." Such a condition by no way is discordant with the stipulations of the deal.

Transactions not requiring the sameness of the sitting

The sameness of the sitting, as already mentioned, is an important condition for the validity of all dealings except the following three ones:

(i) Bequest (which means making changes to the property of a person after his death). Quite obviously, there is no possibility of the sameness of the sitting between the offer from the *devisor* and the acceptance from the *devisee* during the lifetime of the former, for it is not lawful for the later to do so. Thus the acceptance will take place only after the death of the devisor.

(ii) Bequeathing of a person to some one else to look after the children and descendents of the former after

his death. The devisee is not under legal obligation to pronounce his acceptance during the life time of the devisor. The devisee will obviously be able to execute the will of the deviser only after his death, even if he expressed his approval during the life time of the deviser. In this case too the sameness of the sitting of the parties turns meaningless.

Attorneyship (*wikalat*) (transferring of one's authority of protecting the property to a person during the proprietor's life time).

Since the *wikalat* comes from concept of facilitation of ease, its offer to a person and his acceptance need not the sameness of the sitting at all. The attorney might express his approval by word or by his act, that is to say, by practically engaging himself with the responsibilities he has been charged with by his client. Attorneyship may also be given to a person who is not present in the sitting, and the attorney shall be at liberty to take up his task on the strength of his knowledge in this regard. [15]

The Hambalites hold that all unbinding deals that don't require immediate approval of the second party shall be regarded valid like the attorneyship, as partnership, *muzarabat, muzaara't, musaqaat*, trust, commission, etc.

Executing deals by telephone, wireless etc.

In executing the deals the sameness of the sitting doesn't always require that the transacting parties share the same place. For it is quite possible to attain

time connectivity between the dealing parties without being present at the same place for example by the use of telephone, wireless, or executing the deals by way of correspondence. As a matter of fact, the unity of sitting means the unity of the time during which the parties are engaged in executing their transaction. Likewise, the sitting of transition stands for the sitting in which the transacting parties talk about the transaction. Hence the juridical principle, "Sitting brings the scattered together." [16] As long as the talk on the phone or wireless is about the transaction, the time shall be regarded of the sitting of transaction. As soon as the parties diverse their talk to any other topic, the sitting shall terminate. Likewise, if the transaction is being carried out by sending the letter, telex, fax etc, or by sending a message through a messenger, the sitting of transaction shall be regarded the one in which the letter or messenger approached the second party. The messenger is the representative of the sender; he shall be regarded the same as the party itself. If the representative gave approval, the deal shall come into being. If the non-present party is addressed by the first party through the intermediary of a letter, telegram, fax, etc., it is as if the party was addressed directly. If the addressed party expressed has approval during the sitting in which he happened to receive the message, the deal shall come into being. But if he deferred to pronounce his approval to subsequent sitting, the offer of the first party shall turn meaningless and the deal will fail.

The detail furnished above establishes the rule that while for the present transactors the sitting shall be regarded the time in which the offer was made, for the non-present transactors it shall be the time when the party received the message, letter, telephone, fax etc. The intermediary has the right to pull out of his offer in presence of two witnesses, provided it occurred prior to the expression of approval (verbally or by way of letter, telegraph etc.) by the second party. The majority of the Malikites, however, holds that the offering party has no right to withdraw his offer without giving a sufficient chance to the second party.

In case the transaction is being executed through the modern advanced systems of communication, the parties shall be required to meet all the conditions except the sameness of the place of deal. The transactors are better advised not to use the Internet to execute important dealings as the website is comparatively more prone to be approached and abused by an unknown person. It is also noteworthy that while, according to the Hanafites, the offer and approval of marriage has to be attended by two witnesses. To the majority of the *Fuqaha* it will be sufficient if the woman's guardian hears the offer and approval by the man and woman. Marriage is a very delicate matter. In most cases there are little possibilities of a prior introduction between the man and woman. It is therefore unwise to execute the marriage contract through modern systems of communication.

Time for the completions of the transactions between non-present parties

There is a general consensus amongst the jurisprudents that in the case of the non-present transactors the transaction shall come into being merely on the strength of announcement of approval by the second party, apart from that the transaction is being carried out through the modern advanced systems of communication or by traditional ways, even if the first party continues to be unaware of that. [17] Here is an illustrative example. One party, by phone or wireless, said to the second party, "I sold my house or that car to you," and the second party replied, "I accepted it", the deal will come into existence even if the offering party failed to know the approval of the second party by any reason, e.g., due to a discontinuation of the connectivity or any other similar reason. Likewise, if the transacting parties sent message to each other or used the wireless, telex, fax, etc. for the execution of the deal, or decided to marry, the deal, or marriage, will come into being as soon as the addressed party pronounced his approval, apart from that the offering party knew it or not. However, with the view to remove possible ambiguities the practice goes that as a first step the telex or fax of offer is sent on the part of the first party, and then follows the telex or fax of approval on behalf of the addressed party, and then follows the exchange of the documents of the completion of the transaction.

Interestingly, the same practice has also been

recognized by articles ot the contemporary laws. About the dealing between the non-present transactors the Egyptian civil law's article No. 91 says: "Expression of the intent shall be effective when the addressed party came to know it. His receiving of the addressees' intent shall be considered a sign of his knowledge unless found otherwise". Notably, there are some Hanafi jurists, like Al-Nasafi and Ibne Kamal Pasha, who hold that the present transactors must have the knowledge of each other's offer and approval.

As for the dealing between two non-present transactors, the article No. 97 says:

> "The time and place for the completion of the deal shall be considered the one in which the offering party came to know the approval of the second party. Unless specified or agreed otherwise legally, it shall be maintained that the offering party has got the knowledge of the place and time in which the approval occurred and he could know it."

To my opinion, in such a case of dealing the offering party must have the knowledge of the second party's approval. It is because the commercial dealings are very complex despite the advancement of the modern systems of communications. It is safer to ensure the smooth dealing between the parties and is more tactful to make the approving party stay committed to his approval. The failure of the offering party to know the approval of the second party may cause serious problems to him. To the same view subscribes Dr Abdul Razzaq al-Sinhauri. [18]

References

1. Mujallatul Ahkaamil Adliah/Article No. 173, 174
2. Ibid, Art. 175
3. Abid Art. 70
4. al-Sharhul Kabir lid-Dardir 3/3, al-Mughni 5/562
5. Durre Mukhtar & Raddul Muhtar (Ibne Abiden 4/10, Fathul Qadir 5/79, al Badaie 5/137, al-Sharhul Kabir (Dardir with Dasuqi 3/3
6. al-Mujallah, Art. 69
7. al-Muhazzab 1/257, Ghayatul Muntahi 2/4
8. al-Badaie 5/136, Fathul Qadir 5/80 with footnotes by Ibne Abidin 4/5, al-Sharhul Kabir with footnotes by Dasuqi 3/5, Nihayatul Muhtaaj 3/8, 10, Mughniul Muhtaaj 2/5 and subsequent pages.
9. Mughniul Muhtaj 2/6
10. al-Badaie 5/137, Fathul Qadir 5/78, Mawahibul Jalil lil Khitab 4/240, al-Sharhul Kabir with Dasuqi 3/5, al-Sharhul Saghir, Hashiatul Sawi 3/17, al-Sharhul Kabir with Mughni 4/40, Ghaayatul Muntahi 2/4
11. Nihayaul Muhtaj 3/8, Mughniul Muhtaj 2/6
12. al-Badaie 5/139, Fathul Qadir with Inayah 5/78,80
13. al-Badaie 5/134, Mughniul Muhtaaj 2/43, Ghaaytul Muntahi 2/29
14. Mawahibul Jalil 4/241
15. al-Madkhalul Fiqhi alAam by Prof. Mustafa Zarqa p. 171
16. al-Badaie
17. al-Tabir anil Iradah fil Fiqhil Islami, by Dr. Wahid Siwar p. 118
18. Masadirul Haq 2/57

Conducting transactions, commercial deals through Internet and other modern systems of communication

By Dr. Nooruddin Mukhtaar al-Khadimi

Defining Internet [1]

Internet is a scientific term which gained currency towards the end of the twentieth century. It is actually the contraction of the INTERNATIONAL NETWORK. In short, the Internet is a worldwide network of interconnected computer sets, which enables the user to connect himself to any computer of the Net. It is also termed as the World Wide informative network. [2]

Although Internet plays a very active role in the areas of culture, economy, information, research, education, health, politics, peace, travel, entertainment: etc., [3] it is being particularly employed in the field of economic, commercial and monetary activities. In fact, such were the factors which contributed very much to the origin and development of the Internet, with the result that today it has become possible to execute commercial, marketing and similar other dealings through the Internet, either the second party expresses his approval verbally immediately after the offer was made to him, or giving his approval through a letter.

In this sort ot dealing the otter and acceptance between the parties must be realized in the form of the exchange of correspondence, signatures or addressing. Notably, a commercial dealing between two parties may take place by communication as well as by the exchange of documents. [4] In the following lines I will try to state the position of the *Shari'ah* on both the sorts of dealings through the Net: direct communication between transacting parties or through the exchange of the documents of offer and approval.

Commercial dealing through e-mail

Commercial transaction carried out through e-mail is regarded by *Fuqaha* as those carried out by writing and the exchange of letters. However, it must meet all the conditions and provisions set by the *shariat*. There exists a general consensus amongst the Fuqaha about the validity of the commercial transactions carried out by writing or the exchange of the documents of offer and acceptance.

However, the *nikah* contract will not come into being this way. [5]

Marghinani says: "writing is like speaking." [6] Dasuqi has written:

> "A commercial dealing carried out by the exchange of words or documents of offer and approval between the parties or by the speech of a party and the writing of another one shall be valid." [7]

A clear writing, which in fact is the expression of the intent and a sign of agreement between the trans-

acting parties, is absolutely like the speech. To quote the Dasuqi's footnotes:

> "A business transaction comes into being with the acts denoting the agreement of the parties like writing, signing or the exchange of merchandise and price". [8]

This view is preferable, for it is founded on the arguments supplied by the *Fuqaha*. More importantly, it is fully consistent with the rulings and objectives of the dealings related to the realization of the agreement between the dealing parties, excluding all the possibilities of misappropriation, fraud and harm to other parties. It eases the exchange of immediate interests between the parties, making possible for them to achieve the benefits of the dealing. If such ways of dealing are not allowed, it will be quite impossible to evade the mischief's and harms to be unavoidably suffered in the absence of such legal remedies. Further more, this view is more akin to the spirit of the contemporary time and abler to keep abreast of the modern advanced age. This will give a boost to the Islamic developmental system and enhance its activism if it is permitted to enter into the walks of life in lines with the positive and constructive mechanisms with a fuller consideration to the sound principles of the Islamic *Shariah*. Conversely, if this view is excluded outright, and the commercial transaction by e-mail is held impermissible, whole the Islamic developmental system is bound to suffer retreat. It is because of the fact that the Internet has now become a phenomenal tool and is being employed particularly in the areas of trade and com-

merce unsparingly, exerting its increasing impact on the economy of the nations and states.

Giving preference to this viewpoint, the Jaddah-based Islamic *Fiqh* Academy says in its judgment as follows (9)

> "The Sixth Seminar of the Islamic *Fiqh* Academy held in Jaddah (KSA) in March 14, 15, 1990 to discuss the stand of the *shariat* on employing the modern advanced systems of communication to bring clarity and swiftness to the execution of the financial and commercial dealings, properly meeting all the conditions like oral or written communication, pointing, exchange of the message in case the transaction is between two non-present parties, and the sameness of the sitting of deal, consistent with the time of offer and approval with nothing to denote the contrary from either end, having gone through the written discussions of the *ulama* the Academy received on the topic, has arrived at the following decisions:
>
> • If a deal between two non-present parties, who are not available at one place, nor seeing or hearing each other's words, is being carried out by correspondence, or the exchange of letters or messages, through telegraph, telex fax or the computer screen, the deal shall come into being as soon as the offer reached the second party and he pronounced his approval of the offer.
>
> • If the parties present at separate places are dealing at the same time through telephone or wireless, the dealing shall be considered as the

one between the present parties, and to it shall be applied all the related juridical details.

- If the first party has made an offer through these means for a limited time, the party shall be required to remain committed to his offer till the specified time expires. In other words, he shall have no right to pull out his offer.
- Marriage, is not included in the rule mentioned above. For it comes into existence only if its offer and approval is attended by two witnesses. Similarly, the *bai sarf* and the *bai salam* too are not included in it. It is because of that the farmer sort of sale involves immediate possession of the purchaser and the latter advance defrayal of the total cost of the merchandise.
- The cases of dealing having the possibility of defect, fraud or mistake in transaction shall be referred to the general principles of affirmation.[9]

Conditions for the letters to be written by Internet:

The messages or letters to be sent out by the Internet must be clear and vivid in their content, written in legible language. This is to exclude all possibilities of mistake, fraud, misappropriation and similar other sorts of gulping down other people's belongings and properties without a legal right. To ensure the safety of both the parties, the documents must bear the signatures, names, addresses and stamps of the parties.

To quote here the *al-Mausutul Fiqhiaya.*

> "The states of the transactors and the nature of the transactions may make difference to the concept of *majlis* (sitting). A generally recognized prerequisite for the validity of transaction is that the offer and its approval must take place during the same sitting. If the sitting of offer is different from that of approval, the transaction shall be invalid. It is noteworthy that if the parties are selling face to face, such a *majlis* of transaction shall primarily be different from the situation where the transactors are non-present. Likewise, the dealing which is carried out through the exchange of words of offer and approval between the parties shall be at variance with the offer and approval to be executed through the exchange of message and correspondence."

If the writing is not clear and legible, due to any reason like the paper is not good to give clear print, or the ink is dim, or the power supply is disconnected and the Internet failed to work, the above mentioned conditions shall be considered wanting, the deal shall not come into existence. Likewise, if the writing is not good enough to be read, or the ink or paper is swiftly perishable, or the system ceases to functions properly the deal shall not be valid. For such a defective proceeding is feared to deprive the parties of their rights and interests due to the perishing of their concerned documents.

On electronic signature

Signature is a personal symbol which a person

makes on a document as a sign of his approval of it. [10] This is made either by writing, signing or the thumb impression. These are traditionally known types of personal signing. There might be similar other ways to be used as a sign of one's commitment to the contents of a document. Electronic signature is also a way of singing a document. Actually it is secret code or a definite token which denotes the agreement of the signee. [11] This type of signature too is as much useful for the purpose mentioned above as the traditional signature, and is quite known amongst the people who generally use electronic systems of communication for their commercial dealings. As a rule of the Islamic law the established usage between a community is regarded as condition. To quote an authority here. "A deal of buying and selling shall come into existence by an act which denotes the consent of the parties, be it a word, writing or indication from one or both the parties. [12]

Determining the sitting of transaction, if it is being carried out with the exchange of writing on the Net

> "The statements of the *Fuqaha* clearly speak of the fact that if the transaction is taking place between two non-presents parties, the sitting of transaction shall be considered the sitting in which the second party expressed his approval, in writing or by an envoy." [13]

Another authority says:

> "If the buyer has sent a letter or message to a non-present party to the effect that he has sold his house

etc to him, and the addressed party expressed his approval, the deal shall take place". [14]

Going by those statements, the sitting of approval shall be held the sitting of dealing, in case the dealing is taking place on the Net. In other words, if the sender's message was received by the addressed, and he expressed his approval, the transaction shall take place. It is as if the first party came to the second party in person and made the offer. On receiving the message or writing of the offering party, if something appeared from the addressed party to denote his disapproval of the offer, or he expressed nothing and left the place, the *majlis* shall terminate and the deal will not take place. With dealing on the Net the message must reach the very party itself; it is not just enough that a message got to the memory of the computer of the addressed party without his knowledge. It is quite possible that the addressed party come to know the offer after a time. If such an offer is held binding, it might cause great harm to the rights and interests of the second party. The offering party, however, has the right to make a time limit for his offer, before the expiry of which he can't withdraw. If this time limit expired and the addressed party failed to react to the offer, he may withdraw his offer. [15]

In this mode of transaction it is not a condition that the first party (sender) receive information about the approval of the second & (addressed) party. The jurisprudents have clearly stated that the business deal between two non-present parties will take place as

soon as the addressed party gives its approval. [16]

The law puts no restraints on the offering party if he specifies a time period for his offer, beyond which the offer shall no longer be open. Since such conditions violate no rule of the *Sharia*, nor harms the purpose and intent of the deal, the offering party is permitted to introduce conditions, thereby to save himself from the possible harms of a delayed approval. As for the expression of approval, a full consideration shall be given to the *urf* and the accepted usage, like intimating the offering party by a letter or within a specific time. Also there might be other ways for the same purpose set as established usage by the people transacting through the Net and other modern systems of communication. Customs and established *urfs* also are held acceptable by the *shariah*.

<u>Discretion of the parties transiting by the exchange of messages on the Net</u>

This discretion means that the parties transacting through the exchange of messages on the Net have the right to issue or withdraw the offer. Discretion of the seller and buyer has been treated in greater detail in the Islamic *Fiqh*. It has many kinds: discretion of the sitting, discretion of the conditions, discretion of misappropriation, discretion of fault, discretion of fraud, etc. to name only a few. 17 The law provides all such types of discretion to both the offering and approving parties. Further detail follows:

Discretion of withdrawing the offer

According to the majority view of the jurisprudents, the party making the offer via the Net has the right to withdraw the offer before the second party's pronouncing his approval. The Maliki jurisprudents, however, hold otherwise. They say that once the *mujib* (offering party) made the offer, he loses the right of withdrawing the offer even if before the second party's expressing his approval. It is because of that the offer of the first party has proved the right of acceptance as well as of turning down the offer to the addressed party, and his withdrawal shall not invalidate the offer. 18

Notably, there are more details about the rights of the offering party if the offer is made using the past tense, or the matter is related to charities and non-obligatory offers.

Discretion of the addressed party

If the second party received the offer via the Net in a sitting, he has the right either to accept or reject the offer within the time of the sitting and before the withdrawal of the offer on behalf of the offering party.[19]

Renewal of the message received by the Net:

Earlier jurisprudents as well as the contemporary *ulama* generally mention the renewal of the written offer in another sitting. To quote an authority here:

"In his book, al-Mabsoot, Shaikhul Islam Kha-

wahar Zada wrote:

"Address and writing are similar to each other. The only difference is that in the event of verbal address to a woman present in the sitting if she failed to express her approval in the same sitting vis-à-vis the offer, and expressed it later in another sitting, the marriage shall not take place. If, on the other hand, the offer of marriage has been made in writing and the woman read it in the same sitting but did not express her approval, and gave her consent to the proposal in another sitting in presence of two witnesses who were able to hear her consent and the contents of the letter, the marriage shall take place. It is because of the fact that the woman has received the proposal in writing which exists even in the second sitting. It is as if the proposal was made again in the second sitting, and quite obviously, the verbal proposal will lose its legal effect in another sitting. Apparently, the business transactors too must have the same facility. This goes contrary to what is stated in the al-Hidayah. The point needs further deliberation. [20]

About the renewal of the written offer in another sitting, the contemporary *ulama* hold two different views: [21]

According to a view the renewal of the written offer can't be done in another sitting. To this view subscribe Prof. Md. Abu Zuhra and Dr. Md. Yusuf Musa.

Another view is held by Shaikh Ali al Khafif. Commenting on the view of the authors of the al-Hidayah and its commentary, Fathul Qadir, he says:

"To my view, the said ruling is relatively more ap-

plicable to the business transactions as compared with the marriage. For, obviously, the laws of business transaction are not so much tight and uncompromising as are those of marriage. Going by this the addressed party receiving the offer in writing must have the right to read it in the first sitting without expressing his approval of the offer, leaving it to be read again in the next sittings and then to express his approval. Thus, each time reading should be treated as the sitting of transaction it self." [22]

The way of the renewal of the offer sent via the Net shall be that the addressed party read it in the same sitting in which he happened to receive it and express his approval. Shall a business transaction take place by such a delayed approval? To our opinion the time of reading the message shall be considered to be the sitting, as is the view of Sheikh Ali al Khaafif noted above. Being the Internet a highly fast-working and cheaper device of connectivity, renewal of offer on it is not feared to cause a harmful delay. Inordinate delay, however, is not under question. Any longer delay which may harm the interests of the offering party shall have to be avoided.

In short, repetition of offer on the Net entails no legal fault as long as it is not harmful to the rights and interests of the offering party. It is also a sort of the renewal of the written message to remind the addressed party of the offer by telephone and draw his attention to contemplate the offer and react to it positively or otherwise.

Sale and purchase by telephone

Telephone too is from among the modern system of communication. It enables the users to communicate directly even if the communicators happen to be present far distantly. Today we have two sorts of telephone instruments: the one which conveys only the words of the speaker to the hearer. This is the oldest and the commonest system at the disposal of the users. The other one is the videophone. This one is the most up-to-date and is becoming increasingly popular. In the following lines we shall separately discuss the position of the *Shariah* vis-à-vis the financial and business dealings taking place through both these types of instruments.

Sale and purchase by audio phone

If the telephone instrument is able to transmit the voice of the speaker to the hearer clearly, the sale and purchase may be done by it, because the *fuqaha* have expressly said that any business deal might take place between the parties existing somewhat distantly provided they are able to hear each other with no ambiguity, even though unable to see each other. [23]

Similarly, it takes place between the parties who stood separated by veil or cover. [24] As a matter of rule, distance, non-presence, cover or inability to see each other will do no harm to the validity of the deal concluded. Through the telephone nor impedes the realization of the mutual agreement of the parties. Tele-

phone is no more than a system ot transmitting the speaker's voice to the hearer not a new instrument of expressing one's will. [25]

It is an established juristic principle that in the cases of financial dealings the customs and the commoner usages carry full legal weight in the eye of the *Shariah*. Today it is quite common that individuals, groups, companies, corporations even the governments generally employ the telephone to talk and conduct their financial dealings, and there is nothing in the rules of the *shariat* which contradict these usages. Rather, those usages are completely in consonance with the general objectives of the *Shariat*. They aim at nothing except easing the dealing, achieving benefits and delivering the rights whom they actually belong to, and prevent fraud, embezzlement, unjust dealings and similar other evils of business from taking place.

Sittings of transaction in the event of sale and purchase by telephone

In the event of telephonic conversation the sitting of transaction shall be considered from making the offer and the expression of consent by the selling and purchasing parties, and during the time no party shall have the right to withdraw his offer or consent, even if the deal is not yet final, or the talk discontinues volitionally or otherwise. It should be noted that *the majlise aqd* shall be considered only the time during which the event of offer and consent takes place rather than the time of the whole talk about the dealing. In fact this is

very much similar to the transaction in which the second party has no option of turning down the offer as, for example, the business dealing between the parties while walking on foot or traveling by a conveyance. But if both the parties are sitting together, they are at liberty to make or reject the offer and consent. 26 In case the talk breaks before the second party expresses his consent and he wishes to do the deal, the talk may be resumed. But now the order of the parties will take a reverse term; the offering party shall become the consenting one and the consenting one shall occupy the place of the offering one and the deal shall hang on the acceptance of the second party. This is based on the opinion of those jurisprudents who hold that any party may be the offering one. [27]

More flexibly, the sitting of transaction may include whole the telephone-talk as long as it centres round the deal, with offer and consent side by side, with no deviational break from the topic. Any slighter break will do no harm to the deal unless the talk denotes a deviation from the deal. [28] What talk is denotative of deviation and what is not shall only be decided by the practical usage of people, as the *Fuqaha* have expressly stated. [29]

Sale and purchase by telephone and discretion of the sitting of transaction

The preferable view is that the parties of the telephonic transaction have the right to accept or reject the offer. This right shall terminate by their separation if

their talk is suggestive ot it. Physical separation ot the parties plays no role in the termination of this right unless they speak such words which denote the termination of it. Actually the telephonic transactors are physically separate from each other as they happen to be present at distant places. The *fuqaha* are generally of the view that the parties of business transaction have the right to accept or reject the offer, contending with the *Hadith* which reads: "The parties of the business transaction have the right to accept or reject the offer unless they separate, except in the case of the optional sale. This view is opposed to the Hanafi and Maliki standpoint, which completely excludes the freedom of acceptance or rejection of the offer except in the case that such a condition is already mentioned. If so, this right shall terminate by words and thus the telephonic transactional sitting will come to an end.

Business Transaction by video phone

Business transaction may be conducted by videophone provided the unity of *majlis* is ensured, with nothing to denote withdrawal of any party from transacting. In fact this type of transaction shall be regarded similar to the transaction between two parties present distantly but hearing and seeing each other. As a matter of rule, this is quite lawful if the unity of sitting is ensured and there is nothing to denote the withdrawal of either party from the transaction and other terms and conditions or met. However, any party shall be permitted to leave the *majlis* to bring anything to the

majlis related to the transaction itself. The *majlis* of transaction will terminate if anything out of the following three ones happens: [30]

(i) The talk on phone came to an end

(ii) In spite of the continuation of the talk, something occurred which denoted withdrawal of either party from the deal, and,

(iii) The transactors see each other while leaving the *majlis*.

Leaving the *majlis* will make no difference if it is in connection with the preparation for the deal.

Conducting *nikah* by Internet, telephone etc.

For the *nikah* what is originally required is that the offer and approval should be expressed verbally. For it is the verbal expression which may better express the intention of the parties towards marriage and the rights and obligations the marriage contract ensues. This is a generally agreed upon juristic view vis-à-vis the speaking people. As regards the speech-impaired people, their marriage shall be contracted by writing and the writing will stand for the verbal expression. This is a unanimously agreed upon view. Another equally important thing in marriage is that the parties themselves attend the sitting of marriage. And, keeping in view the noble aims and higher objectives of *nikah*, certitude of the parties' identification, strengthening of the mutual ties and ensuring the fulfillment of the mutual rights and obligation, the same is more preferable, wise and discreet.

Nikah of the non-present party by writing

About the marriage of the non-present, speaking party there are two views:

First, the marriage contract will not take place because the writing on behalf of a non-present party is not sufficient for the purpose. This is the standpoint of the Malikites, [31] Shafiates, [32] according to one narration, and of the Hambalites, according to one narration.[33] The arguments are as follows:

(a) Writing is an allusion which is as much useful for other things as for marriage; *nikah* will come into existence only by the words which might be testified.

(b) Marriage is a matter of special caution as compared to other contracts and deeds, and the verbal pronouncement is more discreet course as compared to the writing.

Second, *nikah* may properly take place by writing. This is the opinion of the Hanafites, [34] Shafaites, according to another narration [35], and of the Hambalites, [36] as suggested by another narration. Brief contention of this view is that writing also is as much useful for any purpose at the time of unavoidable need as verbal pronouncement and is an expression of the writer's intention and volition. This latter view is obviously preferable. To encapsulate it, the *nikah* will properly take place by writing provided that the witnesses are aware with the contents thereof and bear witness to the event of approval. For the witness is a condition for *nikah*

and the otter and approval must be witnessed by two witnesses. This condition will remain unfulfilled if the witnessing is restricted to only offer or approval. Given this extraordinary importance of the witness, the better course of action for *nikah* is the presence of both the parties at one place in one time. This is more apt to ensure the proper achievement of the higher objectives of marriage, its motives, bilateral identification of the parties and so on. In the case of *nikah* between the non-present parties, contrariwise, the presence will strictly remain restricted to their imagination and hearing could never be a substitute for seeing. Still, in spite of the limitations of the *nikah* by writing, the *shariah* holds it permissible in considerations to various circumstantial compulsions. The proper course of action for the *nikah* by writing, would be bearing witness to the event of offering. The event of approving too should be witnessed by two witnesses who hear the approval of the party to the offer. Thus witnessed, the offering party will have no chance of turning back from the offer under the excuse of any unauthorized change inserted into the text of offer by someone else.

This opinion is of Shafaites, who hold that both the events of offer and acceptance should be witnessed separately by two separate witnesses. [37] We espouse the Shafai standpoint as it is more discreet to exclude the possibilities of withdrawal of the offer from the offering party. Only witness to the contents of the written message could hardly deter the offering party from turning back from the offer.

Nikah by writing and the question of the sitting of *nikah*

As regards the sitting of *nikah* in the event of the *nikah* by writing, this will be the sitting in which the written message of offer is read out and witnessed by the witnesses and the approval of the addressed party is announced. Receiving the message by the addressed party is by no means the sitting of *nikah* because the *nikah* can never take place unless is witnessed by two witnesses. The addressed party has the right to leave the *majlis* where he happened to receive the written proposal and present the witnesses to his approval in another sitting.[38]

Contracting *nikah* by Internet or telephone

In case of the *nikah* by the Internet, the written message, voice of the speaker and his image all will involve in the event. By videophone, however, only the image and the voice of the speaker involve. In the former case, the written message shall be sent out via computer and will appear on the other party's TV screen, of which the print out might be obtained. To explain the former, the parties will talk directly to each other in the chat room or via the website which copies both the voice and the image of the speaker. This involves the use of modern advanced technology. In the event of the use of videophone the voice as well as the image of the speaker will appear on the display unit; if the simple phone is being used only the voice of the

speaker is heard. For a direct talk between the parties and to copy both the voices and the images of the speakers, the use of the modern advanced communicational technology is unavoidable. Of note is the point that what is common to all the communicational systems is that they offer communicative connectivity between the distantly located persons. The connectivity offered by the telephone and Internet between two persons might be of the same time as well as different in time if the message is sent out in writing. For, quite obviously, the addressed party can receive the message only after some time. On this ground, the *nikah* by telephone or Internet is arguably very much similar to *nikah* by writing between two non-present parties, which is permitted by the Hanafites as well as by some other *Fuqaha* on condition that the contents of the written offer and the approval of the addressed party be witnessed at least by two witnesses. The same rule shall be applied to the *nikah* coming into being by modern advanced communicational systems like fax, e-mail, telegraph and telex. *Nikah* by even more advanced communicational systems like videophone, Internet etc. too will obviously be governed by the same rule; far they directly convey both the voice and the images of the speaking parties. Notably, the element of directness in the *nikah* by the latter type of communicational systems transforms the sitting of *nikah* into the one having the marrying parties and the witnesses in it even though they physically are distantly located. They may hear and see each other. This

lessens the possibilities of deceiving, fallacy and turning back from the *offer*. We come across a similar case in the Kashful Qana of Imam Bahuti, "Suppose some people approach a person and ask him to contract marriage between so-and-so man and woman, and he said, "I contract this marriage for example, on one thousand. And, receiving the information, the husband pronounced his approval; the marriage shall take place according to the Hambali jurisprudent Abu Talib.[39]

Majlis of *nikah* in the event of *nikah* by Internet, telephone

In the event of the *nikah* by the Internet, telephone, etc. the sitting of *nikah* shall be regarded the one in which the approval is expressed. To be more particular, if the offering party sent his written message by fax, telex, telephone or by Internet alongwith his image and voice, addressing therein that he wants to give his daughter in marriage to so and so person, and the addressed party expressed his approval towards the proposal, the *nikah* will take place by this expression. The only provision is that the events of offer and approval be attended by the witnesses.

Conducting business transactions by fax, telegraph and correspondence

Fax is an instrument, [40] which is capable to copy the documents perfectly according to the original with as much quick performance as talking on the telephone. Sale and purchase by fax will be regarded similar to

the business deal taking place by writing between two non-present parties. The condition is that the writing should be clear, signed and properly stamped. Besides this condition, all other conditions prescribed by *shariat* to normal business deals shall invariably be applicable to this type of the sale and purchase. Many contemporary Muslim scholars have elaborately discussed these issues regarding the sale and purchase by modern advanced communicational systems to be similar to business transaction by writing or correspondence between two non-present parties. This writer, therefore, thinks it unnecessary to go into further detail.

Sale and purchase by videoconferencing

Videoconferencing stands for the meeting between the people who hold communication by the video system. This meeting may be direct, as by the videophone, Internet or satellite. It may also be indirect, as, for example, is the case with the recorded videocassettes which are used according to need. In the following lines we shall attempt to state the rule of the *Shari'at* vis-à-vis the sale and purchase by direct and indirect meetings.

Sale and purchase by direct videoconferencing

In direct videoconferencing the transacting parties are united in time but different in their physical locations. They are fully able to see each other and hold communication. Such a type of business transaction

talls under the category ot transaction taking place between so distantly located parties as to see and hear each other directly. The *Fuqaha* have held it a valid type of business transaction. To quote the juristical authorities:

> "If they are so distantly located as to hold business transaction by resorting to shouting, the transaction will take place, and this is a generally agreed upon proposition." 41

> "If they conducted a meeting and hung the certain or put a cover between themselves, the right to hold or withhold the trade deal will remain unchanged, even if the period gets longer." 42

Needles to say, if the sale and purchase is valid between two so distantly located parties as to unable to see and hear each other as are able to see and hear each other directly, shall be even more obviously permissible for the latter mode of business is even more certain to ensure the agreement of the parties. This point gives an edge to the latter mode of business over the former one. Given the facts as above, this mode of business transactions is quite permitted even if it lacks the unity of place between the dealing parties.

The point which is invariably important to all types and modes of business is that the business deals must be based on complete transparency and agreement between the parties. Any intentional wrong doing, deceptions and taking possession of other's belongings without a legal right is bound to render the deal utterly invalid. The contemporary tendencies, increasing needs and expediencies all demand that the business

deals conducted by the modern communication facilities, like video conferencing, be held valid. The *Shariat* has full consideration towards the customs and usages not contradicting the established rules of the Islamic law. Al-Majmu, a very well known *fiqhi* text, reads: "Recourse shall have to be made to the normal usage (in things left unspecified by the *Shariah*); and if an act of sale and purchase is regarded valid by the people, the *Shariat* accepts it as such." [43]

Sitting of Transaction in the case of direct videoconferencing and the right to consent or reject the deal

So far as the right to holding of or withdrawing from the deal is concerned, it is much the same as stated under the use of videophone and image-conveying Internet system for conducting the sale and purchase deals; it therefore needs not to be repeated here. For both the situations involve the use of advanced communication technology.

Conducting sale and purchase by recorded videoconference

Unlike direct videoconference, the recorded videoconference does not convey the voice and image of the speaker in a direct way. It facilitates both these things in the recorded form offered to the second party to have his opinion on the matter. Apart from the difference of places, the recorded offer or acceptance is marked by the difference of time between the two

events ot otter and approval. This is more titting to be regarded similar to the sale and purchase deals by writing between the non-present parties, a mode of business held valid by a near-total majority of the *Fuqaha*. More importantly, the facilities of hearing and seeing the party, and its easy availability for future needs give the recorded videoconference an edge over the mode of business by writing.

In short, doing business by modern communication systems is comparatively more satisfactory provided all other conditions are properly met.

Sitting of transaction, unity of sitting and difference of sitting

Originally, the business deal should take place between the present parties by the use of clear and unambiguous words. If so, the sitting of transaction will have three components, i.e., (1) place, (2) time, and; (3) the state of getting together and separation of the parties. The sitting of transaction brings into being the offer and approval which are connected by time, place and the state of the parties. That is to say, the business deal between two present parties and the act of offering and accepting takes place during one time, on one place and one state of the parties with no distance in time or backing off of either party's from the deal. However, the sitting of transaction may sometimes miss the element of unity of the place. This happens when the transaction is between the non-present parties. Such transaction is permitted by many *ulama*

when the sitting ot transaction is united. It has to be remembered that the unity of sitting stands for inter-linking the proposal with consent in single sitting which is the condition for the validity of the deal. On the same ground the *Fuqaha* hold that the presence and non-presence of the transactors make difference to the unity of the sitting of transaction. The point is explained below:

(i) Unity of *majlis* in presence of the transactors

This means that the proposal and consent take place on the same time and place with no backing out or separation.

(ii) Unity of the *majlis-e-aqd* in the absence of transactors

It means that the act of proposing and consenting takes place in the sitting of transaction. In this case the term of sitting of transaction shall be applied only to the sitting when the consent is expressed by the party who happens to receive the offer by message or correspondence. A short distance between the event of receiving the proposal and consent by a talk unrelated to the deal will do no harm to it, as stated by al-khattab al-Maliki. [44] To the Shafai standpoint, the time difference must not be abnormally longer, even if it is caused by forgetfulness or unintentionality. According to reliable sources, the Shafai jurisprudents hold that any talk related to the deal by no way shall be harmful

to the deal apart trom that the talk is longer or shorter. [45]

As far as the interlinking of the offer and consent or the unity of sitting is concerned, this shall depend only on the sitting when the consent has taken place. So, when the proposal reaches the second party, it shall be regarded as if the proposing party visited the second party in person and made the offer by his own self. In case the sitting is over, or there occurred any thing which might be regarded as withdrawal from the deal, the deal will collapse. [46]

Consenting to the proposal: the question of immediateness or time distance between the two

About the questions whether a time distance between the proposal and consent is harmful to the concept of the *unity of majlis* the majority of the jurists holds that the immediateness does not constitute a condition for the validity of the consent as long as they take place within a single sitting. To use another expression, the distance between the events of offering and consenting shall do no harm to the validity of the deal if both the events take place in the same sitting. For the consenting party is always in need to have some time to ponder over the different aspects of the deal. To quote the jurist Bahuti here:

> "If the consent took place some time later when the proposal was made, the deal shall validly take place, provided both the acts of proposing and con-

senting took place in the same *majlis*."[47]

Difference of the sitting of transaction

The term *differentness* of the *majlis-e-aqd* is applied to the condition where the consent is not interlinked with the proposal in terms of time. There are many affairs and deals where this interlinkingness does not constitute a condition to their validity. Out of those the following three ones need mention.

Aqd-e-wasiyyat. In this *aqd* the *will* is accepted after the death of the *testator* and the *legatee* takes possession of the deceased's property.

Aqd-e-wisaya or Isa. It means the testator's appointing some one as caretaker to his underage children. This too shall be accepted only after the demise of the testator.

Aqd-e-wakalat. In this *aqd* the attorney is at liberty to accept it even outside the *majlis-e-aqd*. Since this type of *aqd* is unbinding, the client has the power to quash it any time.

Notes and References

1. Husain Farooq Sayyid: al-Internet: al-Shabakatul Duwalia lil Malumat p. 82, also, al-Internet wa Afaqul Bahsil Ilmi: Mufid Zaidi, p. 52, Jamalus Shirhan, al-Wasailut Talimiah wa Mustajiddatul Teknologia p. 735,739
2. Nuruddin Mukhtar al Khadimi: al-Internt wa Maqasidus Shariat wa Usooluha wa Qawaidulha, p. 10
3. Darkazli Salman Shazzi A.D.: al-Internet Tharwatu Thaqafa wal Talim p. 37, 73, al-Internet fi Khidmatil Islam: Abdul Munim al-Nahdi, p.11, A.D. Nadi Kamal Azizi: al-Internet Wasilatun wa Usloobun lit-Talimil Maftuh Dakhila Hujratil Dirasah min Bu'd p. 89, 90, al-Wasailut Talimia wa Mustajjddati Teknologia al-Talim: Dr Jamal al Shirhan p. 141, 143.
4. The direct talk by Internet is that which is carried out in the chat room etc. and the exchange of the written messages in done by way of e-mailing.
5. al-Mausuatul Fiqhia 30/209
6. Hidaya with Fathul Qadir 5/79
7. Hashia Dasuqi, alongwith al-Sharhul-Kabir of Dardir (printed on the footnote of the former book) 3/3
8. Op. cit. (with slight change)
9. Mujallah Majmail Fiqhil Islami (Jeddah) 6th session issue no. 6:2/1267,1268
10. Mujallah Shuoonil Ijtimaia, issue No. 48, p. 88 with reference to al-Tauseeq bil Kitabah, Dr Abdullah al-

Masha'l 2/658

11. Abdullah al-Masha'l Dr. al-Tauseq bil kitabah 2/661 and subsequent pages.
12. al-Sharhul Kabir & Hashiatul Dasuqi 3/3
13. al-Mausuatul Fiqhia 30/217
14. Kashaful Qana 3/148
15. Refer to the decision of the Islamic Fiqh Academy. Jeddah 54 3/6, Badaius Sanai 5/138, Kashaful Qana 3/148
16. Fathul Qadir 5/81 and subsequent pages, Badaius Sanai 5/138 Kashshaful Qana 3/148
17. al-Mulakkhasul Fiqhi, Salih al-Fauzan 2/17 and subsequent pages.
18. Mawahibul Jalil, al-Khattab 4/241, al-Fiqh alal Mazahibil Arba' 2/175
19. This is according to the Hanafis and Hambalites. To the Shafites, contrariwise, the consent must occur immediately. The Malikites permit a slight delay which can't be construed backing off from the deal. For further detail, c.f. Fathul Qadir 5/78,79, al-Majmu 9/179, al-Furooq 3/172,173
20. Hashia Ibne Abidin 4/512 and subseq. pages
21. c.f. al-Tauseeq bil Kitabat fil Fiqhil Islami wa Tatbiqatulhul Muasarah: Abdullah al-Masha'l 2/448
22. Ali al-Khafif, Ahkamul Muamlatil Malia: 1/179, (with reference to the said authority.)
23. al-Majmu 9/193, Mughni al-Muhtaj (of Khatib Shirbini 2/45)
24. al-Mughni 3/484
25. Abdul-Razzaq al-Haiati, Hukmu Ta'aqudi abra Ajhizatil Ittisalil Haditha fi Shariatil Islamia p. 18
26. op. cit. p. 25,26,30
27. al-Fiqh alal-Mazahibul Araba'a 2/157

28. al-Mausuatul Fiqhia 30/214
29. Op. cit.
30. Hukmmut Ta'aqud abra Ajhizatul Ittisalil Hadith p. 31 and thereafter.
31. Mawahib lil Khattab 3/419
32. al-Majmu 9/177,178
33. al-Bahuti, Khashful Qana 5/39
34. Hashia Ibne Abidin 3/12, Badaius Sanai 3/330
35. al-Majmu 9/177, 178
36. al-Mardavi, al-Insaaf 8/50
37. al-Majmu 9/178. According to the Hanafi viewpoint it is not a condition that the receiving of the proposal be attended by the witnesses. For the witnesses it will be just enough to hear and witness the proposal in the *majlis* of approval. For further detail, see Hashia Ibne Abideen 3/12, 13, Badaius Sanai 3/1330
38. Hashia Ibne Abideen 4/512 and sub. pages, also, Mujallah Majmaul Fiqhil Islami sixth session issue No. 6 p. 955,956
39. Kasshaful Qana 3/148
40. Abdul Razzaq Buwais Juma: Teknologial Malumat p. 35 with reference to al-Tauseeq bil Kitabah 2/647
41. al-Nawawi: al-Majmu 9/193
42. al-Mughni 3/484
43. al-Majmu 9/163, also al-Mughni 3/56/62
44. Mawahibul Jalil 4/241
45. Mughniul Muhtaj 2/5,6 and Hashia al-Qilyubi 2/154
46. al-Masuatul Fiqhia 30/218, where exist various references to the four schools of Fiqh
47. Kasshaful Qana 3/147,148
48. al-Mausuatul Fiqhia 30/218, also the decisions of the Jeddah Islamic Fiqh Academy.

Conducting business dealings via modern systems of communication

By Ml. Khalid Saifullah Rahmani (Hyderabad)

Man has been addressed by the *Shariat* with two kinds of injunctions; first *ibadat* (the acts of worship and devotion). They are primarily meant to connect the man with Allah in a direct way, like *Namaaz*, *Saum* (fasting) Hajj (pilgrimage to the Holy House of Allah at Makkah), Zakat, Sacrifice etc. Second, *muaa'mlaat* (the customary affairs). They are meant to direct and manage the behavior of human beings towards each other: between the citizens of a country, between individuals and the State or vice versa. As far as the first category of the injunctions is concerned, they are based on the textual expressions of the *Shariat*, and no gap has been left to be filled by man on his own. To know about the acts of devotion (*Ibadaat*) we are always in need to refer to the expressions of the *shariat*. A much larger number of the *ahadith* revolves round the *Ibadaat*. Any addition to or omission from this category is extremely disapproved of and is termed to be *bid'at* (innovation). In fact prohibition is the original idea which runs through all the acts of devotion, and no act could be regarded as the act of worship unless it is based on a sound expression of the *Shariah*.

Muamalat (customary affairs), on the others hand, run along the concept of expediency and the pursuit of

legitimate interests ot people. All the customary attairs meant for achieving benefit, or thought expedient in attaining good are held lawful unless they contradict the established principles of the *Shariah*. In short, unlike the acts of devotion, lawfulness runs through the customary affairs.

In the sphere of the *muamalaat*, the Law of Allah has laid down some broad principles and restrictions, under the circle of which every way may be applied to achieve those interests and the general good. Many things are held unlawful and prohibited in this sphere like usury, gambling and the sale and purchase of the things which carry no value in the eye of the *Shariat*. Similarly, the law of God stipulates that all dealings of the sale and purchase must be kept free from all such ambiguities and un-clarities which are feared to bring differences and discord between the parties. Mutual agreement is the foremost condition for all the dealings and the transactions of sale and purchase or other social contracts. The Holy Qur'an has laid down the principle of mutual agreement of the parties in the following words:

يا أيها الذين آمنوا لا تأكلوا أموالكم بينكم بالباطل ، إلا أن تكون تجارة عن تراض منكم .

> "O those who believe! Don't eat up your wealth among yourselves by unjust ways: except there be trade by mutual agreement." [1]

Agreement is an act of heart. It is hard to be noticed by anyone else what is the will of a person regarding a matter. There are only two ways which might stand for one's agreement towards a thing: one's verbal expression of agreement, or an action of the kind. For the ex-

pression ot the agreement the Law-giver has laid down no specific way. However, the *fuqaha* have tried to specify this according to the differing grades of importance of the transactions and dealings. Since marriage is directly related to the human chastity and this aspect lends to the marriage exclusive importance, the agreement to this act must be expressed by words. In the terminology of the *shariat* the expressing of the mutual agreement of marriage is termed to be *ijaab-o-qubool*. As for the financial dealings, any usual and known way may be applied to express the agreement. According to most *fuqaha* all types of sale and purchase may take place merely on the basis of give-and-take. More cautious *fuqaha* hold that only the customary business affairs may be carried out on the basis of give-and-take.

Verbal expression of agreement goes into two sorts: oral, which is the commoner use in day-to-day affairs. The other being giving approval in writing. While oral approval has always been in common use of the people and the Holy Prophet too exercised it, written approval of the sale and purchase transactions also finds mention in *hadith*.

The Islamic shariat has laid down no specific way of writing, neither restricts its approval to any specific type of pen and paper. At the advent of Islam the wooden pen was the only writing device and the things like bones and stones were in use in place of the paper. As the human technology progressed, the pen assumed many advanced sorts like computer and the

likes. In future it many assume even more advanced shapes. In the days of your we had only human messengers to convey the message from one place to another. Now in the shape of the Internet, we have a very high-performance messenger capable to convey our message from east to the furthest west within seconds.

This prefatory note may be encapsulated as follows:

- As far as the *Ibadaat* are concerned, their aims and objectives and their way of doing both are definitely expressed by the Law-giver himself, and no omission from or addition to is acceptable.
- Sale and purchase falls under the category of the customary affairs. Permissibility is the original positions vis-à-vis this category as long as there arises no clash between it and the established norms of the *shariat*. For this category is meant to serve broader purposes of human beings. In short, the *shariat* has determined the objects of the customary affairs but not the way how to achieve them.
- Mutual agreement holds primary importance in affairs and business deals. Mutual consent may be expressed verbally, in writing, or by any other known way.
- Computer shares the ruling on the writing. The Internet, traditional telephone instruments, videophone are no more than the systems of conveying the message and communication from one to another.

In the light ot these preliminary points the answers to the questions follow:

Defining *majlis* and determining its unity and difference

Majlis, from the root *juloos,* is applied to both the adverbials of place and or time. Generally, before arriving at the final conclusion, the parties sit together to discuss the pros and cons of the transaction. Hence the term *majlis.* Apart from the frequent use of *majlis* in the context of the contractual obligations, the term has occurred many times in connection with the *Ibadaat* as well. Being manifestly known to everyone else, the ancient *fuqaha* didn't bother themselves to define the *majlis* in specific words. The contemporary jurists, however, have tried to define it. Perhaps the most accurate and systematic definition of the term has been attempted by the authors of the *Mujallatul Akhkamil Adliah.* To quote it here:

> "The *majlis* (sitting) of a business transaction is the meeting of the parties to hold the business transactions." [2]

Dr. Wahba Zuhaili has defined *majlis* as follows:

> "*Majlis* of transaction is the state in which the transacting parties are while doing transaction. To use another expression, centering the speech (of the parties) round the transaction." [3]

Keeping the juristic restrictions in mind, Dr. Abdul Razzaq Sinhori has sought to define it in even clearer words:

> "The *majlis* of transaction is the place where the

transactors happen to exist. It begins from the time when the offer is made, and will continue till the transactors are busy with the transaction itself and there appears no sign from either party of turning from the topic." [4]

Taking into account the above mentioned three definitions we notice that Dr, Sinhori has defined the *majlis* in terms of the place of transaction. According to the Mujallatul Ahkam the meeting of the transacting parties is the essence of the *majlis,* but it too fails to explain whether the meeting of the transacting parties might be achieved if the place differed. Dr. Zuhaili's definition holds the *majlis* to be the state and conditions in which the parties are engaged in doing transaction, one making the offer and the other accepting it. Thus according to the last definition, *majlis* is the conditions of talking about the transaction rather than the unity of place of the transaction. This definition is more apt and reasonable as compared to former ones. The reasons follow:

(i) Throughout the Qur'an and *Hadith* we find nowhere that singleness of the place of offer and acceptance is the condition for the business dealings.

(ii) In transactions the mutual consent is of pivotal import, and the difference of the sittings makes little difference to the concept of mutual consent.

(iii) In the *Fiqhi* literature we come across some cases of the kind where the offer and consent have been acceptable to the *shariah,* the difference of place notwithstanding.

Admittedly, in the ancient *Fiqhi* literature we come

across the concept ot the singleness ot place ot otter and consent. However, so is largely because of that at those days it was quite unimaginable to think of other sorts of ensuring the time connectivity between the offer and consent than the one experienced. Therefore, it is just the statement of a contemporary communicational fact rather than of a condition.

Singleness and differentness of *majlis*

Primarily, the real connectivity is required between the offer and acceptance. Singleness of the place of offer and consent is required for no other purpose than the same one. As a matter of law, the offer has to be immediately followed by the expression of consent. Since it is extremely difficult to always maintain such immediate time connectivity between the two events, the *fuqaha* hold that the connectivity shall be regarded to be existing as long as there appeared nothing from the addressed party, within the same sitting, which might suggest his refusal of the offer. As far as the refusal is concerned, change of place or discontinuing the action which he was doing when the offer was made may be suggestive of it. "If the addressed party left the sitting of offer or busied himself in another thing suggestive of the difference of the earlier sitting before giving his consent to the offer, the sale transaction will not take place." [5]

Quite obviously, had the offer existed even after the lack of interest of the purchasing party, the offering party would have been required to wait for the reac-

tion of the addressed party indefinitely, divested of the right to make his offer to others.

The discussion above establishes it well that the unity of *majlis* means nothing but an unhindered connectivity between the offer and the consent. The required connectivity might be ensured by two things: first, unity of time of the offer and consent, second, the offer must not be followed by an act or movement suggestive of the purchasing party's lack of interest. For the unity of *majlis* the *fuqaha* hold that both the events of offer and consent must have time connectivity, which can't be ensured without the unity of time. If the *majlis* (of offer and consent) changed, the dealing will fail. For example, if one party made the offer but the second party left the *majlis* or shifted himself to another work, the offer shall cease to be valid, because it is the unity of time which ensures the connectivity between the two events." [6]

Moreover, we have *fiqhi* texts which clearly state that the unity of *majlis* means the unity of the event of offer and consent rather than of the *majlis* of the transactors. To quote here:

> "The unity of *majlis* is the presence of the transactors. That is, the event of offer and acceptance takes place in single sitting. It can be achieved with that the *majlis* of the offer and consent be the same with or without the unity of the *majlis* of the transactors. For the condition of connectivity is the unity of time of offer and consent. So, for the sake of ease for the sellers and purchasers, the *majlis* is held to be comprehensive of all the aspects involved." [7]

The author, Ibne Nujaim, might have said this in the context of the transaction by exchange of messages and writings, yet we can benefit from this principle in carrying out trade transactions through modern advanced systems of communication.

Furthermore, we find, across the *Fiqhi* literature, various items which are quite sufficient to conclude that the offer and consent connected invariably by time have been regarded as of the same *majlis,* the difference of places notwithstanding. Important things follow:

(a) "It is also a sort of the unity of *majlis* that the seller and purchaser are walking, on foot or a single conveyance. In such a condition if the offer is immediately followed by the consent, the deal shall take place. Likewise, the deal shall be held valid even if the second party gave him consent after walking one or two feet. In such a condition the second party's answer to the offer shall definitely take place on a place different from the one where the offer was made." [8]

(b) "A person present in the house said to the person present on the roof, "I sold that item to you for a certain sum", and the addressed person replied, "I purchased," the sale transaction shall take place. The only condition is that both the parties are seeing each other to eliminate the possibilities of ambiguity in the speech arising out from the remoteness." [9]

(c) "If a sale deal is contracted and a canal occurred

> between the parties, the sale transaction shall take place." [10]

Having cited various instances of the kind, Ibne Nujaim states his own judgement as follows:

> "Vis-à-vis such cases my opinion is that if the parties are so distantly located as to cause ambiguity in the exchange of speech between them, the sale transaction shall not take place, otherwise it shall be valid." [11]

To cut the long story short, for the unity of *majlis* what is required is the unity of time of the event of offer and consent, apart from that the parties happen to be present at the same place or differently and stand connected by any way.

Sale and purchase via the Internet

Sale and purchase through the Net may have two possible types: (i) The parties are available on the Net at the same time; one party offered and the other one accepted. If such being the actual condition, the transaction shall take place. This is as if the events of offer and consent take place in the same sitting, because the time is the same and the words of the offer and acceptance complete. (ii) The other possible type is that a party addressed the other one and made the offer, but the addressed party was not available on the Net to react immediately. He, however, received the offer as soon as he opened the Net. If the latter party expressed his consent immediately after going through the contents of the offer, the deal shall take place. The notable difference between the two sorts being that while in

the former type the event of consent follow the event of offer, eliminate all possibilities of withdrawal of the offer, the offer is not complete in the second type unless the addressed party opens the Net and goes through the offer. In this type the offering party has the right to withdraw his offer as long as he has not yet received the consent on the part of the addressed party. Discussing the sale and purchase by way of writing, the jurist Kasaani has written as follows:

> "As far as the sale and purchase by way of writing is concerned, it is that a person writes to another one as: "I sold my that item to you for the sum so and so." On receipt of the message, the other party said in the same *majlis* "I purchased it." As a matter of rule, the addressing of the non-present party is his letter of offer. It is as if he attended the *majlis* by himself and made the offer and the other party consented to the offer. And if he wrote only a part of the deal and then withdrew his offer, the withdrawal shall be considered rightful as the writing is not above making the offer face to face. In the case of addressing, too, the offering party may withdraw his offer till the purchasing party expresses his acceptance. So, in the event of the deal by writing, first party's right of withdrawal is even more obvious."[12]

From among the scholars of the present age Dr. Wahba Zuhaili holds valid the offer made by the telephone or a similar system of communication. To quote his words:

> "The same rule will be applicable when the offer is made through telephone or similar other sys-

tems."[13]

Nikaah via the Internet

Compared to all other mutual dealings, the marriage is far too important and delicate. While permissibility is the original point in all other things, as established by the juristic principle, *"permissibility is the original rule in all things,"* in human modesty, contrariwise, the original point is the unlawfulness. It is for this reason that the proposal and consent of marriage must be interlinked with each other and should essentially take place in presence of the witnesses. As far as the provision of the witnesses is concerned, it is based on the following saying of the Prophet (SAWS):

> "It is reported by H. Ayisha that the Holy Messenger of Allah said. No *nikah* can validly take place without the guardian and two just witnesses. Any *nikah* taking place in violation to this condition shall be null and void. In case there occurred a dispute, the sultan (supreme authority of the Muslim State) is the guardian of every one without a guardian." [14]

The above quoted *hadith,* although singly transmitted, offers a certain ground for the principle because of the fact that the jurisprudents, without a single exception, stand agreed on the condition of the witness. [15, 16] The witness or testifier is so termed because he attends the *majlis-e-nikah* in person, hears the proposal and the consent. He may be called to bear testimony, to what he saw and heard, if there arises a need to it. "The *nikah* will not take place unless each party is able to hear the words of each other and the two witnesses hear their offer and consent concurrently." [17]

More preferably, the witnesses should have intact eyesight as to some *Fuqaha* a blind person is fully unfit to play the role of witness of *nikah*. (For more detail, refer to al-Fiqhul Islami wa Adillatuhu, 7/76)

Moreover, the *nikah* proposal and consent via Internet is prone to ambiguity, even to deception. Possibly, the *nikah* proposal and consent may be carried out by other persons than the original contractors and the witnesses, unaware of deception, might bear witness in favor of the deceiving persons. Much as such apprehensions can't be ruled out in the case of financial dealings via the Net, yet the profound difference between a financial deal *nikah* is too obvious. Further, in the e-mode of business the seller sends the merchandise through the company and then price is deducted from the bank account of the purchaser and is transferred to the credit of the seller. This process lessens the possibilities of such fraud. In case any party committed fraud even after such measures, the loss may easily be offset. So, the *nikah* proposal and consent via the Net directly is not valid. Still, by Internet the *nikah* might be contracted in lines with the writing mode of *nikah*. The party may appoint somebody his/her attorney via the Net, and the attorney may contract the *nikah* of his client. Or the attorney may write the message of *nikah* of the party on the Net and second party read out it before the witnesses and then express the consent on his/her behalf. In this mode of *nikah* both the proposal, made by proxy or by message, and the direct consent take place in presence of the witnesses and the

nikah shall take place, as the *fuqaha* have said regarding the marriage by writing or by messaging.

> "If the man sent a messenger to the woman or sent writing to her (in connection to *nikah*) and she expressed her consent to the proposal in presence of such two witnesses who had heard the message brought by the messenger or the writing, the *nikah* will take place because the unity of *majlis* of proposal and consent is obtained, even if impliedly. For the messenger conveys only the words of the sender. Likewise, the writing also substitutes for the address and direct talk. Thus, listening to the words of the envoy and reading of the writing actually amounts to listening to the words of the sender or the writer, even though the parties do not listen to each other physically."[18]

This way the condition that both the proposal and consent be heard by the witnesses is fulfilled. 19 This is according to the Hanafi standpoint. So far as the other three schools of Islamic *Fiqh* are concerned, they have specified that *nikah* by writing can't take place. For writing is just an allusion to them, whereas the *nikah* can be contracted only by unambiguous verbal expression. So, according to the Shafai, Maliki and Hambali standpoint there is no question to contract the *nikah* by writing, let alone the Internet. To quote an authority here:

> "The Malikites, Shafaites and the Hambalites hold that the *nikah* shall not take place by way of writing, apart from that the parties are present or absent."[20]

Obtainment of transacting parties' secret information by a third person

If the parties of a sale and purchase deal employ a secret code to execute their deal, this obviously means that they want to maintain secrecy, and everybody has the right to keep his affairs out of other people's eyes. No third party is allowed to infringe upon their secrecy. The Holy Prophet (SAWS) has proscribed it that one peeps out into the houses of other people. He even said that if the violator of this rule suffered an injury at the hand of the house inmates, the latter shall owe no reparation. It is reported by H. Abu Hurairah that the Prophet (SAWS) said:

> "If one tried to peep at other people's houses without their permission, they have the right to knock out his eye." [21]

Based on this, it shall of course be an act of breach of trust to try to obtain the secrets of other people's business deals by tracing out their secret codes.

(a) Sale and Purchase by videoconference

If the business deals could be carried out by the Internet, as discussed above, the business by videoconferencing shall be even more obviously permissible. Videoconferencing is safer as compared to the Internet to have the possibilities of ambiguity and dissemblance. Nevertheless, the act of videography itself is subject to juristical differences of the *ulama*.

(b) Sale and Purchase by telephone

Since the business deals are permitted to be carried out by writing, as expressed by Shami, [22] the use of telephone shall be permissible to execute the business deals, as long as the deal involves no act of fraud or deceiving.

***Nikah* by telephone**

The prerequisite of *Shahadat* in marriage (witnessing) consists of two equally important parts: (1) hearing of the witnesses the expression of proposing and consenting, (2) being of the proposing and consenting parties in the face of the witnesses. Besides the conditions that the witnesses must hear the expression of proposal and consent, another equally important provision is that the witnesses see the parties in person, as explained by the following text:

> "… it is pre-requisitely required that two free and adult witnesses attend the marrying parties, hearing their expressions of proposal and consent." [23]

The same view is shared by other jurisprudents beside the Hanafis.

Therefore, since the expression of the proposal and consent of marriage over the telephone is bound to miss the other part of the condition, the *nikah* will not take place; even if the telephone instrument facilitates the full hearability of the proposal and consent to the witnesses. *Nikah* over the phone could only be contracted by appointing somebody as attorney. The boy may appoint the girl his attorney and, likewise, the girl

may appoint the boy as her attorney to contract the marriage on behalf of his/her counterpart. The boy as well as the girl has the right to appoint a third person as their attorney to contract the marriage with so and so on behalf of his/her client. It has to be noticed that the appointment of the attorney will turn a necessity if the marrying boy and girl are not capable of contracting their marriage by themselves. Anyway, the attorney shall have to express before the witnesses, "I have been appointed the attorney on behalf of that boy or girl to contract my marriage with him/her. So I am doing this." Or, "so-and-so person has appointed me his/her attorney to marry him/her with so and so boy or girl. So, I marry him/her with so and so person." The marrying boy or girl will have to express his/her consent to this proposal in presence of two witnesses. The witnesses must be acquainted with the non-present marrying party. In case there is no former acquaintance between the witnesses and the non-present marrying party, the name of his father too shall have to be mentioned in order to establish his identity beyond doubt. As for mentioning the name of the non-present marrying party's grandfather, in most cases it is not necessary except that the determining of the non-present bride's or groom's identity depends on so, doing. To quote an authority:

> "If a woman makes somebody her attorney to marry herself with him and the attorney said to the audience: "Be witness that I married with the so-and-so woman", the *nikah* will not take place if there existed no former acquaintance between the

woman and the witnesses. The *nikah* will take place only when the required identity and parentage of the woman is mentioned." 25

Summary of the discussion:

1. *(a) Majlis* describes the state in which the parties are practically engaged in striking a deal.
   (b) The unity of *majlis* means the interlinking of the offer and approval. The differentness of *majlis,* on the contrary, is applied to the situation when this interlinking is missing.
2. So far as the business deals by Internet is concerned, it has two possible modes. If the parties are facing each other on each end, to make proposal and approval of the deal, the deal shall be regarded concluded forthwith. This mode is of dealing face-to-face. If, on the other hand, the other party is not available on the other side at the Net to react, and is able only to read the message later, this mode is of concluding the deal by writing and the respective *fiqhi* rules shall be applied to it.
3. The proposal and consent of marriage made on the Internet are not valid. The parties, however, are permitted to appoint one another each other's attorney, thereby to contract the *nikah.* The non-present parties may appoint a third person as their attorney to conclude the marriage contract.
4. It shall not be permissible for a third party to secretly access to the details of a business deal con-

cluded by Internet and in which the parties did maintain secrecy.

5. Sale and purchase deals might be concluded by videoconferencing.
6. The sale and purchase could be validly concluded by making written offer and approval.

(The author is a well-known alim of India and a jurist of note.)

Notes and References

1. The Holy Qur'an S.4, A 29
2. Mujallatul Ahkamil Adlia (concerned term): 181 p. 38
3. al-Fiqhul Islami wa Adillatuhu 4/106
4. Masadirul Haq fil Fiqhil Islami 2/6
5. Badaius Sanai 4/324
6. Raddul Muhtaar 4/69
7. al-Bahrul Raiq 3/83
8. Fathul Qadir, 5/461, Badius Sanai 4/325, Khulasatul Fatawa 3/15, Hindia 3/17, al-Bahrul Raiq 5/272
9. al-Bahrur Raiq 5/456
10. Op cit.
11. loc. cit.
12. Badaius Sanai 4/326
13. al-Fiqhul Islami wa Adillatuhu 4/321
14. Nasbur Raya li Ahadisil Hidaya 3/167 chap. Nikah
15. According to the majority of the Jurists the proposal and consent of marriage must be attended by the witnesses. To the Malikites, however, the witness may be made before the consummation of marriage. (For further detail, refer to al-Sharhul Saghir 2/335 and after.)
16. al-Fiqhul Islami wa Adillatuhu 7/70, 71
17. Qazi Khan on the footnote of the Hindia 1/332
18. Badaius Sanai 2/491, also Tatar Khania 3/75 Fathul Qadir 3/109, Hindia 1/369, Raddul Mukhtar 2/26
19. Raddul Muhtar 4/73, Hidayah 2/286
20. al-Fiqhul Islami wa Adillatuhu 7/46
21. Muslim 2/212 Chap. Tahreemun Nazar fi Baiti Ghairihi
22. Raddul Muhtar 7/26
23. al-Durrul Mukhtar with Raddul Muhtar 4/87
24. al-Majmu, Sharhul Muhazzab 17/36, al-Mughni 7/34
25. Khulasatul Fatawa 2/15

Trade Transactions and Modern systems of communications

By Ml. Atiq Ahmad of Basti

Before discussing the questions raised about conducting the trade transactions and financial deals through modern systems of communication it is important to note that, unlike the family law (*nikah*, divorce, distribution of the estate and property of the deceased etc.), whose both principles and the ensuing details have been dealt with in the Qur'an and *Sunnah* in comparatively greater detail, concerning the trade and financial affairs the Qur'an and *Sunnah* have limited themselves only to laying down the general principles and broad outlines, leaving the ensuing details to the established customs and usages. We can hardly find any detail (excepting usury and the *bai-e-sarf)* in the sources of the Islamic law. We have been provided with important principles instead. In line with those principles we are asked to shape our business affairs and financial dealings, keeping in mind the requirements of the age. Ibne Qudama Hambali writes:

> "Sale and purchase is of two types: one is carried out by offer and consent. The other one is done by give-and-take. For example, a person asks the other. "Give me a bread for this *dinar*," and he gave him the bread according to his choice. Or, to take another example, the seller said to the purchaser,

"Take this garment for one *dinar*" and he took it, this sale and purchase shall be right, as Imam Ahmad has explicitly said. Imam Malik too subscribes to the same view. To quotes his own words: "The sale shall take place according to the way regarded to be sale by the people." Some Hanafites hold that such way of sale and purchase may be adopted only in trifling things. The same has been reported from Qazi Khan who says that by give-and-take the sale may take place only in things of little value rather than of great and costly ones. Imam Shafai holds that no sale and purchase can take place without explicit offer and acceptance. Some Shafites too subscribe to what we (the Hanafites) hold.

Our argument is that Allah *Ta'ala* has declared the trade to be lawful but did not express the ways here to conduct it. So, quite obviously, there is no options to know it other than making recourse to the general usage in vogue among people as is the case with the transfer of possession of the purchased item, its getting and detaching from the first owner. The same being the practice of the Muslim in their markets of sale and purchase. It is more because of the fact the act of offering and consorting is intended only to be an expression of the parties' willingness. So, if we had other signs of this willingness, like bargaining, and defrayal of price and taking possession of the purchased item, they also shall be regarded to be representative of offering and consenting, sufficient for the purpose. It is because of that the affairs of selling and purchasing

have no aspect of worship."[1]

There are two very important principles which have to be observed in all trade transactions and financial dealings.

First, mutual consent of the parties. This principle is based on the following *ayats* of Qur'an:

يا أيها الذين آمنوا لا تأكلوا أموالكم بينكم بالباطل ، إلا أن تكون تجارة عن تراض منكم .

> "O those who believe! Eat not up your property among yourselves in vanities: but let there be amongst you traffic and trade by mutual consent." [2]

و آتوا النساء صدقاتهن نحلة ، فإن طبن لكم عن شيئ منه نفسا فكلوه هنيئا مريئا .

> "And give the women (on marriage) their dower as an obligation, but if they, of their own good pleasure, remit any part of it to you, take it and enjoy it with right good cheer."[3]

The Holy Prophet (SAWS) is reported to have said:

> "It is never a lawful act for a Muslim to eat up from the wealth of his brother except out of his will."

It is the condition of the mutual consent vis-à-vis financial dealings due to which the *Shariah* outlawed all such sorts of financial dealings which fail to represent the mutual consent of the parties in the fuller meaning of the term, like *Baie Munabaza, Baie Mulamasa, Bai ilqa, al-hajr* etc, to name a few. But despite the primary importance of the mutual consent, the *Shariat* has not bothered itself to give a particular definition of it; it left

[1] al-Mughni 6/7,8,9
[2] al_Qur'an 4:29
[3] al-Qur'an 4:4

it completely to be determined according to the generally established usage of the people.

The second important principle of the Islamic law of buying and selling is the transparency. Fraud, deception, misinformation etc. are declared outlawed by the *Shari'a.* Concealment of facts of the object of sale feared to lead to dispute between the parties has been held to be invalidator of the deal.

In short, concerning the financial matters and the trade affairs, the Islamic *shari'at* has kept itself limited only to laying down fundamental principles and broad outlines, leaving the application of those principles to the men of Islamic learning and the *Fuqaha* of every age.

So far as the *majlis* of transaction and its unity is concerned, a study of the *Fiqhi* writings on the subject reveals that by the unity of *majlis* what is primarily required is the connectivity between the events of offering and consenting, because it is the connectivity between the events of offer and consent which brings the transaction into being; and is regarded a sign of the parties' mutual consent. In the past the unity of *majlis* was the only thing to ensure the connectivity between the offer and consent and the *fuqaha* justifiably associated extraordinary import to the concept of the sitting of transaction and its unity vis-à-vis the events of offer and consent. However, it does not mean that no transactions can take place unless the unity of *majlis* is physically realized. Had it been so, there would have been no room for concluding a transaction except the

parties stand face to face. The majority of the *Fuqaha* holds that financial dealings and business transactions may as much validly take place between two non-present parties as between those attending the sitting of offer and consent. The topic has been dealt with in much greater detail in the *Fiqhi* literature. In the past the sale and purchase would take place through writing or the exchange of messages between the selling and purchasing parties. Both these sorts of connectivity have been discussed desirably in the literature and the connectivity between offer and consent of the non-present parties has been admitted on a par with the kind of dealing between the parties sitting face to face in the same *majlis*. The detail follows:

The concept of the *majlis* of transaction is quite clear if both the transactors are available in the *majlis* of transaction. It, however, assumes complexity when the buyer and purchaser happen to be at different places. The question we face is how to bring about connectivity between the events of offering and consenting. Obviously, there exists no possibility of an actual unity of *majlis*, only a supposed unity is possible.

The statements of the *Fuqaha* are suggestive of that in case the dealing between two non-present parties, when the offer, whether it is in writing or by a messenger, is received by the second party, the place and sitting of receiving of offer shall be regarded to be the sitting of transaction, and he shall be required to give his consent (if he wishes so) to the offer in the same *majlis*.

Allama Marghinani (the author of Hidaya) writes:

> "Writing is like the face-to-face communication. Sending messenger is also similar to them so much as the place of receiving the writing or message has been regarded to be the majlis."[1]

Kasaani, another celebrated Hanafi jurisprudent, has expressed the way of concluding the sale and purchase transactions, as follows:

> "The wording of the writing should be like that," I sold my so and so servant to you for the sum so and so. On receiving the writing if he, in the same *majlis*, said, "I bought", the transaction shall take place. It is because of that the communication of the non-present transactor is by way of writing. It is as if he attended the *majlis* by himself and communicated the offer directly to the purchaser; and the latter accepted the offer during the same *majlis*."[2]
>
> Ibne Hammam has explained the point as:
>
> "When the letter approached him, understood its contents and expressed his approval in the same *majlis*, the sale transactions will take place." [3]

The Malikite and Hambalite jurisprudents too share the same view vis-à-vis the financial transactions. The only difference is that the Malikite hold that he must communicate his consent to the offering party immediately after he happened to receive the offer in writing.

Allama Bahuti writes:

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[1] Hidaya with Fathul Qadeer. 5/461

[2] Badaius Sanai 5/138.

[3] Fathul Qadir 5/462

"If the buyer is not present in the *majlis* and the seller wrote or sent message to him in this regard expressing therein that he had sold his so-and-so house for so-and-so amount and on receiving the writing or message the purchaser gave his consent to the offer, the transactions shall come into being." [1]

As for the Shafai standpoint, there are two views. First, no sale or financial transaction can take place by writing if the parties are able to speak.

The other view is opposed to the first one; and according to it all financial and sale transaction might be concluded by written communication of offer and consent to each other. While Abu Ishaq Shirazi has given preference to the first view, Imam Nawawi subscribes to the latter one. Following are their statements of their positions.

"If one person wrote to another regarding the sale of an item of his, there are two standpoints: in this regard first, that the sale transaction will take place as the situation demands it. The other viewpoint is that no transaction can take place by writing as long as he is able to speak." [2]

Contrary to it, Imam Nawawi writes:

"It is more proper that the sale transaction and similar dealings will take place by writing because the condition of mutual agreement is fulfilled. Imam Ghazali in his *Fatawa* and Rafai in Kitabul Talaaq accord preferential soundness to the sale

[1] Kashful Qana 3/148.

[2] al-Muhazzab 1/257

and purchase transaction and similar dealings by written communication. Our jurisprudents have said: "If we regard it to be right, the condition is that the addressed party must accept it immediately after he comes to know about the writing. This is more proper."[1]

In short, according to the Hanafi, Maliki and Hambali viewpoint, if the transactors happen to be at different places and the first party communicated his offer in writing and the addressed party gave his consent at the same sitting where he received the offer, the transaction shall validly take place, apart from that his consent is oral or in writing. The Shafites, however, add that the consent must take place immediately after he happened to receive the offer. Any delay between the offer and consent is bound to negate the required connectivity between the two events. Hence no transaction will take place.

This detail being about financial transactions. So far as the *Nikah* is concerned, it profoundly differs from the financial deals. Since it obviously holds more significance and sacredness than all other types of financial and social contracts, the *Shariat* has prescribed more conditions and rules for it. For example, the offer and consent of *Nikah* must be witnessed by two persons. This is a condition which is not shared by any other contract. Given the extraordinary importance of the marriage, the *fuqaha* have adopted a comparatively uncompromising position vis-à-vis the *nikah* by writ-

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[1] al-Majmu 9/167

ing between the non-present man and woman.

Following are the viewpoints of different schools of Islamic jurisprudence:

> "The Malikites say that the *nikah* can't take place by writing. That is to say, if the marriage proposal and consent is taking place by the exchange of writing between the marrying parties, the marriage shall not take place. "Symbolism or the writing the offer and proposal is not sufficient except in the case that one or both the marrying parties are speech-impaired." 1

The preferred view of the Shafaites does not permit the holding of marriage by way of writing. Many Shafai jurisprudent, hold otherwise. To them the proposal and consent of marriage can lawfully take place and the marriage thus concluded is fully valid. Explaining the latter Shafai view, Imam Nawawi writes:

> "The writing by which the marriage can take place should have the contents like that: "I gave my daughter in your marriage." And the writing should be witnessed by two just persons. It is not necessary that the proposer should visit the witnesses; they may also visit him. When the writing reaches the marrying man, he should express his consent verbally or in writing, and this event too has to be witnessed by the same two just witnesses. In case the consent is attended by two witnesses other than those who had witnessed the proposal, there are two opinions. According to the more accurate one, the *nikah* will not take place because his

[1] al-Sharhus Saghir with Bulghatus Saliki 2/17.

consent is not witnessed by the witnesses of the proposer. The other less preferred opinion says that the marriage will come into being because both the proposal and consent have, after all, been witnessed by two witnesses." [1]

- So far as the Hanafi and the Hambali schools of jurisprudence are concerned, according to the essence of the detail available, the *nikah* by writing between two non-present persons shall take place. The Hanafis have discussed the issue in a rather detailed way. As for the written proposal and consent between the present parties, it is not permissible even in the sale and purchase deals, let alone the *nikah*. As regards the proposal and consent of marriage between the two non-present parties, the *nikah* will not take place if both the acts of proposing and consenting take place in writing; the consent must be expressed verbally. With reference to jurist Ibne Hammam, jurist Shami has given the following detail:

"The procedure of it is that man should write to woman. On receiving the written marriage proposal from the man, the woman should call for two witnesses and read out the written proposal before them and express her consent to the proposal, again, before them. Or say "The person so and so has proposed marriage, and I call you to witness that I married myself with him." In case she avoided mentioning the name and proposal of the proposer and said only that she married herself

[1] al-Ashbah wal-Nazair p. 334.

with him, the *nikah* will not take place. Both the proposal and consent have to be mentioned before the witnesses. Reading out the written proposal of the man before the witnesses or expression thereof by the woman will facilitate the hearing of both the proposal and consent. If not so, how the witnesses will be able to hear the proposal and consent." [1]

It is worthwhile to note that according to the Hanafi viewpoint, the act of dispatch of the written marriage proposal needs not be attended by two witnesses. Indeed it is the expression of the consent by the other party which has to be attended by the two witnesses. Similarly, the unity of the *majlis* of proposal and consent too is not required as being the case of the financial deals. The addressed marrying party is at liberty either to express the consent in the same sitting where he/she happened to receive the proposal, or later in subsequent sitting. The addressed party will just need to read out the written proposal and express the consent in presence of two witnesses.

The above given detail about the financial and social deals and contracts between two non-present parties is intended to tell that the juridical principles don't always require that both the transactors invariably attend the sitting, where and when the transaction is being carried out. The *fuqaha* took into account all other ways of establishing the interlinking between the offer and acceptance, or proposal and consent available during their ages.

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[1] Raddul Muhtar 3/12, 13.

The long discussion of different points and aspects of the theme has established beyond doubt that what is actually required is the interlinking of the offer and proposal with the acceptance and consent rather than the physical togetherness of the transacting or marrying parties.

Today the extraordinary expansion of the trade and ever-increasing business needs call for to give more importance and prominence to interlinking of the offer and consent, taking into account all the models of it made available by the scientific and technological advancement rather than insisting on the traditional concept of the unity of *majlis*.

It is also notable that the modern communication system: telephone, fax, telex, Internet etc. are not new in so far as the expression of the offer and acceptance is concerned. They are not more than the means of communication. While in the past the only way of interlinking between the words of the two talking people was that they sit face to face, being located on one place or two different ones but within the shouting range, the modern advanced communicational systems have made it possible for two persons to communicate with each other despite being physically present in two places with thousands of miles of distance between the two. Today an Indian businessman, for example, is able to contract a deal of millions of rupees with an American businessman without stepping out of his house. It is because of the fact that the modern communicational systems facilitate for them to easily

communicate with each other with immediate inter-linking between the offer and acceptance in spite of the thousands of miles of distance between the two.

Offer and acceptance by fax in fact is the mode of business by writing and the rules and details of the writing mode of business shall be applicable to doing business by fax. But by the Internet both the oral and written modes of interlinking are possible. Even the transactors are able to see each other and express their immediate reactions to the offer and acceptance.

Ans. to question 2

From the *Shariat* point of view any business deal contracted by the Internet will take place. To explain the point, if one party made the sale or purchase offer by Internet and the other party expressed his approval immediately after receiving the offer, the deal shall lawfully take place.

Ans. to question 4

If a business party wants to keep his dealing secret, it shall be utterly wrong for anyone else to stealthily enter into the details of the deal without securing express permission from the parties concerned.

By videoconferencing the sale and purchase and similar other deals might be contracted, because here both the parties not just hear the words of each other fully but also are able to see each other. The videoconferencing facilitates the real interlinking of the proposal with the approval.

Ans. to question 6

Sale and purchase deal might be contracted by tele-

phone provided the contracting parties are able to recognizing the voices of each other's.

Ans. to question 3

As far as the *nikah* by Internet is concerned, it will not be concluded if the proposal and approval are in writing, even if the act of writing is attended by two witnesses each side. The only acceptable mode of *nikah* over the Internet is that the written proposal should be read out by the addressed party before the witnesses and then express his/her approval again in their presence.

Ans. to question 7

The proposal and approval of *nikah* on the telephone may take place in the way that both the acts or at least the approval, be heard by witnesses present with each party. The witnesses must be recognizing the voices of both the marrying parties.

But, in view of the extraordinary importance of *nikah* and the subtlety of its mechanism, it is better advised not to contract it by telephone or other similar communicational systems. The nature of *nikah* is entirely different from recurring business deals. In case it is difficult for the parties to get together due to any reason, the better course of action for them would be to appoint their attorneys at each other's city for the purpose. The appointment of an attorney might be by writing, by phone, fax, Internet etc.

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Sale and purchase deals and marriage contracts by Internet and other modern systems of communication

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Introductory note

Sale and purchase deals constitute an inseparable part of the human life, and it is almost impossible for human being to live without involving in selling and buying. It is for this natural reason that many *ahadith* of the Holy Prophet (SAWS) seek to lay down directive principles of selling and buying with its different sorts and modes, coupled with important details. Following the same line, the Islamic jurisprudence has offered an elaborate code of business deals giving necessary detail about the permissible and impermissible modes of trade activities. All these rules have to be observed while entering into business contract with some body. From among the most fundamental principles of business transactions are the *offer* and *acceptance*. That is, one party makes the offer to sell his/her item and the other party accepts this offer. For the offer and acceptance what is essentially required is that both the acts must take place in single sitting. In other words, the deal will not take place if the approval is made after quite a while or the approving party moved away from the *majlis* for some time or engaged himself in

any other work suggesting his/her inditterence or disapproval towards the deal. The condition of the unity of *majlis* was intended to save the offering party from undue trouble. Obviously, the unity of *majlis* or, to be more precise, the interlinking of the offer with approval was conceivable only with the unity of place. Hence the conditions of the unity of place for making the offer and the approval. Again, the unity of the place is not an aim in itself; it is the interlinking of the offer with approval which is actually required. Following are some substentiative juridical statements.

> "The conclusion of the deal means the interlinking of the words of one dealer to those of the other."[1]
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> "If the approval was made after that the approving party walked one or two steps, the deal will take place. Obviously, if both the parties are making the offer and acceptance while walking closely together, the acceptance will take place only in place undoubtedly different from the one where the offer was made. It is also said that the deal between the walking parties is valid unless they don't differ from each other by theirselves."[2]
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> "If the parties are striking the deal and between them occurs (for example) the Mazdhasai river, the deal will take place even if there occurs a big river in which run the boats. The author (may Allah be pleased with him) said: "I have arrived to the opinion that in such cases if the distance between the dealing parties is so vast as to cause ambiguity be-

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[1] al-Jauhatun Nayyirah vol. 1 p. 225.

[2] Fathul Qadir 5/461.

tween their exchange of words, the dealing shall not be right. Otherwise, there is no problem. The same rule is applicable to a covering lying between them. If it does not cause an obstacle to understanding or hearing the words of each other, it shall not be regarded an impediment to the conclusion of the deal."[1]

"If the parties did not separate but made between them a hindrance of covering etc, or dug a canal between them, the separation will not be obtained at all. But in case there occurred a wall between them, there are two opinions. The more correct is that the separation between the parties will not be obtained, as is the case with the presence of a covering, because they did not separate. The same ruling is applicable to the case if two differently located parties make offer and approval by calling out each other from a hearing distance and their sale deal will be valid. This is unanimously agreed point amongst the *fuqaha*."[2]

The preceding statements of the *fuqaha* establish it beyond doubt that what is invariably required for the proper conclusion of a sale deal is the interlinking of the offer with the approval. So far as the unity of place for both the acts is concerned, it was just meant to realize the required interlinking, as it was quite unthinkable in the past without the locational unity of both the offering and accepting parties. But, unlike the past, now the situation stands drastically changed. Thanks

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[1] al-Bahrur Raiq 5/272.

[2] al-Majmu, Sharhul Muhazzab 9/171. al-Mughni 4/8.

to the unprecedented advancement ot the communicational systems, today we are able to strike the business deals with other far-distantly located party without facing any problem of the type of the communicational gap. And the unity of place is no longer a provision for the realization of the interlinking between the offer and approval. The unity of place of the contracting parties, therefore, can't be taken as a permanent provision for the conclusion of the deal. Moreover, two persons may strike a sale deal by way of correspondence and this way the sale deal may take place between them despite their locational difference. Precisely speaking, the unity of *majlis* means the unity of time during which the parties are engaged in contracting the deal. Or, to put it differently, the *majlis-e- aqd* is the state when the deal related talk is taking place between the contracting parties. So, if the talk is taking place by phone, the sitting of contracting shall be the time in which the parties are communicating to each other regarding the deal. This sitting will continue until they divert the subject of their talk. If the business related communication (written or oral) is being carried out by fax or Internet, the *majlis-e-aqd* shall be considered the time when the message is received, and if the approval is expressed in the same *majlis*, the deal will take place, provided that there was no gesture on the part of the approving party after receiving the offer which might mean his withdrawal from concluding the deal. It must be noted that no business deal could be struck even by the use of the modern communicational systems

unless all other conditions are properly met by the contracting parties.

After this long prefatory note, answers to the questions are as follows:

1. Unity of *majlis* means the interlinking of the time of offer with that of the pronouncement of approval, irrespective of that the contracting parties are present in the *majlis* or not. The following citation substantiates this observation:

"Unity of *majlis* is applied to the state where and when the contracting parties are present. That is the making of offer and the pronouncement of approval take place during the single sitting, thereby interlinking the offer with approval. Unity of *majlis* does not always mean the unity of place of the contracting parties. For the condition of he interlinking between the events of offer and acceptance is the unity of time. Hence the *majlis* is made inclusive of all sides of the contract, thus to make the concluding of the deal easy for the parties."[1]

2. A sale deal may be contracted via Internet, as is the case with the exchange of correspondence. The Internet is even safer system than the correspondence to contract a business deal.
3. According to the majority of the *fuqaha* the witnesses must hear both the events of proposing and approving, and this constitutes a precondition for the concluding of the marriage contract.

"The *nikah* will not be contracted unless both the proposing and approving parties hear the words of

[1] Al-Bahrur Raiq 3/83, al-Mausuatul Fiqhiya.

each other and their words are heard by two witnesses at the same time."[1]

4. This establishes that it would not be just enough that the witnesses see the offer and approval in the written form. The only way is that on receiving the written proposal the party read out it to the witnesses and then pronounce his/her approval again before them and then write the same to the first party. In fact this mode of *nikah* is much the same as the *nikah* by writing.
5. Once a sale deal is complete between the parties via the Internet, a third person may use the details of their deal for his own business benefits.
6. Sale as well as other deals might be contracted by videoconferencing. Even the videoconferencing is far less prone to doubts and misapprehensions than most other communicational systems, hence preferable. It is almost much the same as doing business sitting face-to-face.
7. As the sale deals may be contracted by the exchange of correspondence, so must be the case of oral exchange of words of the telephone. Both the oral and written modes of contracting business deals are mentioned in detail in all the notable *fiqhi* texts. Telephone is very much like the correspondence. Therefore, it is quite lawful to concluded the business deals over the telephone.
8. On telephone the *nikah* can't be contracted. It is

[1] Qazi Khan (on the footnote of the al-Hidaya 1/232, al-Majmu Sharhul Muhazzab 17/360, al-Mughni 7/341)

because ot the tact that even though the proposing and approving parties are considered united in *majlis*, yet without the presence of the witnesses, and it is an established fact that the words of the proposal and approval of marriage must be heard by the witnesses. Missing this condition, the *nikah* will not take place.

"For *nikah* it constitutes a precondition that the proposal as well as approval must be attended and the words of the parties be heard by the two free, adult witnesses simultaneously."[1]

An attorney for marriage may, however, be appointed. This too may have two modes. One is that each party may appoint his/her counterpart to be his/her attorney who then make proposal and express approval on his/her counterpart's behalf in presence of two witnesses. In this mode the witnesses must have an acquaintance with the parties. In case there existed no such an acquaintance, the attorney shall be required to mention the names of the clients with their parentage.[2]

The other mode is that one party appoints somebody else his/her attorney and this attorney pronounce approval on behalf of his client in presence of two witnesses. This way too the *nikah* will be contracted.

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[1] al-Durul Mukhtar with al-Raddil Muhtar 4/47, al-Majmu 17/360, al-Mughni 7/341.

[2] Khulasatul Fatawa 2/15.

Concluding sale deals and marriage by Internet, other systems of communication

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The conclusion of all such dealing and transactions which involve the financial defrayal are subject to a mutual consent. As the *fuqaha* have put it unanimously, the *ijabb* and *qubool* constitute a prerequisite for the sale deals and other social contracts. As far as the *ijaab* is concerned, it means making the offer of the business deal or *nikah*. As regards the *qubool*, it means the approving of the offer or proposal. Both *ijaab* and *qubool* are invariably required to be interlinked with each other. Letting the matter of interlinking loose would have amounted to placing the contracting parties into problem, hence the interlinking of the *ijaab* and *qubool* a condition for the validity of the deal, as stated by the *fuqaha*. Interlinking is of two types: actual, it applies to the situation when the offer is immediately followed by approval. The other one is implied. It means that both the offer and approval take place during the same *majlis* but the approval follows the offer slightly later. Perhaps that is why the unity of place of offer and approval too was held a part of this condition. A study of the related texts of the Four Great Schools of Islamic jurisprudence makes it almost clear

that the unity of place of offer and approval was held a condition to ensure the interlinking of the offer with the approval which was otherwise unconceivable in the past. However, today the things stand changed altogether; an overall unprecedented scientific advancement has brought an unimaginable revolution to the communicational systems, which has virtually brought even the longer distances to naught and whole the world has turned into a global village. Now we face the question if the condition of the unity of place is still as much relevant to present changed times as it was in the past, for, despite the communicational advancement, the place distance is still a factor to be addressed.

Unity and difference of *majlis*: what does it means?

Majlis stands for the time period during which a deal is concluded between the contracting parties; and the unity or difference of *majlis* is applied to the continuance or change of the time period during which the business deal is concluded. Thus the unity of *majlis* is nothing but the interlinking of the time of offer with that of approval. Substentiative statements follow:

> "If the *majlis* is changed, the deal will not be concluded. In case one party made the offer and the other party stood up from the place or engaged himself in any other act, the offer will remain no longer valid because the condition of interlinking is

the unity of the time period."[1]

Dr. Wahba Zuhaili has put it in even more elaborate words:

> "Unity of *majlis* does not necessarily mean being of the contracting parties located on a single place, as sometimes one party might be available on a place different from the locational site of the other and still both and interlinked with each other by a connectivity system. The unity of *majlis* means the unity of the period of time during which the contracting parties are busy with concluding the deal. Thus the sitting of contract stands for the state in which the contracting parities are negotiating the deal. About the same state the *fuqaha* have observed: "The *majlis* brings the diverse together." [2]

These statements of the *Fuqaha* make it clear that the unity of *majlis* in fact is the unity of time and the interlinking of the offer with the consent and approval. So far as the locational unity of the parties is concerned it carries little significance in itself; it is just to ensure the interlinking between the offer and approval. If the required interlinking is ensured by a means of communication or by any other way, the parties may dispense with their locational unity. "If the party expressed his approval after stepping one or two strides, the deal will be concluded." [3]

Following observation of the Fathul Qadir's author is of note:

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[1] Raddul Muhtar 4/69.
[2] al-Fiqhul Islamic wa Adillatuhu 4/461.
[3] Fathul Qadir 5/461.

"Undoubtedly, if the contracting parties are negotiating the deal while walking, that of approval will essentially differ from the place of the proposal." [1]

Obviously, the lawful contracting of the deal while walking is demonstrative of that the unity of place is not essential for the interlinking of the proposal with the approval.

To cut the long argumentation short, the meaning of the unity of *majlis* is nothing but the unity of time period during which the parties negotiate a deal. The differentness of the *majlis*, on the other hand, is applied to the change and difference of the time in which the dealing is contracted.

Sale and purchase through Internet

Sale and purchase too of course is a sort of deal of which the unity of *majlis* is a precondition. Earlier, it has been cleared that the term unity of *majlis* is applied to the sameness of the time of concluding the deal; it does not necessarily require the presence of both the parties under single roof. More so, the sale deals through Internet take place in writing and for the deals to be concluded in writing the Islamic *Fiqh* makes no condition of the unity of place for the concluding parties[2]. In this way the deal of sale and purchase shall be regarded lawful even if the deal concluding parties stand on a distance of thousands of miles from each other. The only condition is that the second party must

[1] Fathul Qadir

[2] Badaius Sanaie 3/335

react to the proposal immediately after his receipt of the message from the first party.

> "Correspondence is like addressing." The same rule is applicable to the messaging. Going by this rule the *majlis* in which the writing or the message reaches the other party shall be regarded the same," (in fact an extension of the *majlis* of dispatch of the writing or message. –Ed)[1]

The same point has been expressed by a contemporary, great expert in Islamic law:

> "The same is the case of the situations in which offer is made by a person to another through the telephone or by any other similar system of communication."[2]

Ibne Abiden Shami has written the following words to express the legality of concluding sale-purchase deals through the medium of correspondence:

> "The sale and all other dealings could be concluded by way of writing."[3]

The Malikites too share the same view, i.e., sale by writing has full legal bearing.[4]

To conclude, the sale-purchase deals concluded by the Internet is fully legal and correct.

Nikah through Internet

If the offer and consent of marriage is made on the

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[1] Hidayah 3/9.

[2] al-Fiqhul Islami wa Adillatuhu 4/321.

[3] Raddul Muhtar 7/26.

[4] see for detail: al-Sharhus Saghir 3/21, 13, 14.

Internet in writing and each party happens to have its own set of two witnesses, the marriage shall be regarded legally valid. In the Hanafi school of jurisprudence a similar instance of marriage is available.

> "If a man sent a written marriage proposal to a girl, or sent a message in this regard to her through the intermediary of an envoy and the addressed girl expressed her consent in presence of two witnesses, the marriage will come into being. For the unity of *majlis* is being found here, even through not physically. The words spoken by the envoy to the proposed girl are in fact of the sender; the envoy has no role more than conveying the words of the original speaker to the addressed party. The same being the case of the written proposal (of marriage etc); it is as good for the purpose as the address itself. So, hearing the words of the messenger and reading the writing of the sender in fact is the act of hearing or reading the words of the original speaker or writer."[1]

This example is fully applicable to the concluding of marriage through the Internet, for the condition of the unity of *majlis* in fact is being met here.

The Shami too has dealt with the problem of concluding marriage by way of writing and has arrived at the conclusion that it is fully legal, and marriage in writing is as much legal as the one concluded by the exchange of address. [2]

To conclude the discussion on the point, the of-

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[1] Tatarkhamia 3/75, Fathul Qadir 3/109, Alamgiri 1/369.
[2] Raddul Muhtar 4/74.

ter/proposal and the consent ot marriage made through the Internet shall be legally correct from the Hanafi point of view, and the *nikah* shall be considered valid. But, to other three schools of Islamic jurisprudence, i.e., the Shafai, the Maliki and the Hambali, however, the written proposal and consent is not regarded valid. Hence the marriage over the Net invalid.[1]

Concluding the sale-purchase deals through videoconferencing

Concluding the sale and purchase deals through videoconferencing in fact is a form of business transaction between two non-present parties. For concluding such a type of sale-purchase deal the unity of *majlis* is not a condition. Moreover, in videoconferencing the parities are able to talk to and see each other. This aspect brings about the unity of *majlis,* at least impliedly. Such sale-purchase deals, therefore, are fully valid. To quote here an authority:

> "The unity of *majlis* is applied to the situation in which both the dealing parties are available in the same place. Precisely speaking, the offer and consent is made in the single sitting in the way that the *majlis* of offer and consent is united even though the dealing parties stand apart from each other. For the unity of *majlis* what is necessarily required is the unity of time. Thus the concept of *majlis* combines the dealing

[1] al-Fiqhul Islami wa Adillatuhu 7/46 Asssharuss Saghir 3/350.

> parties, thereby facilitating the dealing for the contracting parties.[1]

The same thing has been expressed by the author of the al-Hidaya in the following words:

> "For the *majlis* combines the scattered. Therefore, its different hours are treated as one."[2]

In this regard the statement of Dr. Wahba Zuhaili is quite decisive:

> "The *majlis* of transaction in fact is the condition in which the parties are engaged in concluding their business deal. To use another expression, the unity of the parities' mutual talk at the place of concluding the deal."[3]

To conclude the discussion, sale-purchase deals by way of videoconferencing is valid as it facilitates the combination and unity of the exchange of talk between the parties, and that is sufficient for the validity of a sale deal.

Sale and purchase over telephone

The legality or otherwise of concluding sale-purchase over the telephone primarily hinges upon the meaning and importance of the unity of the *majlis*. The discussion furnished above makes it clear that the unity of *majlis* basically denotes the unity and combination of the time during which parties conclude a sale deal. The unity of time doesn't necessarily require the sameness of the place. Based on this explanation of the

[1] al-Fiqhul Islami wa Adillatuhu 7/39.
[2] al-Hidayah 3/19.
[3] al-Fiqhul Islami wa Adillatuhu 4/196.

concept of the unity of *majlis*, the sale deal concluded over the telephone shall be regarded legally valid.

Nikah through the telephone

There can be two ways of contracting marriage over the telephone. First, involving the HAND FREE instrument which facilitates hearing for all those present in the *majlis*. For the validity of the *nikaah* it is a precondition that the witnesses are able to hear the words of proposal and consent. Since in the case of using the telephone for contracting marriage this condition is fulfilled, the marriage contracted over telephone shall be regarded valid.

> "Hearing of the consent and proposal by the parties and the witnesses is a precondition for the validity of marriage." [1]

Unity of *majlis* too is a precondition for the purpose and the time aspect of the unity of *majlis*, the most important constituent of the unity of *majlis*, is also being fulfilled here.

The other way of the use of telephone is that the instrument is not a HAND FREE one. Since such an instrument can't facilitate the hearing of the proposal and consent to the witnesses, the *nikaah* thus contracted shall not be valid.

However, if a party contracts his/her marriage over the telephone through appointing another party as his/her attorney. To explain it, the man or women may say to another party over phone to marry

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[1] Raddul Muhtaar 4/73.

him/her and the addressed party called two witnesses and said before them that he/she has contracted his/her marriage with woman/man so and so, the marriage shall be regarded valid. To quote here an authority:

> "If a woman, for instance, made a man her attorney to marry her and he, as her attorney, said "I am a witness to that I married myself to the woman so and so," the marriage shall be valid. (If he expressed this in presence of two witnesses) But, if the witnesses are not acquaintant with the woman or man, the *nikaah* shall not be valid unless the parentage and identity of the non-present party is duly mentioned. However, if the witnesses are duly acquaintant with the non-present party, the *nikah* shall be valid even if the parentage and identity is not mentioned."[1]

[1] Khulasatul Fatawa 2/15.

Entering into business and social contracts by Internet and other modern communicational systems

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While studying the *Fiqhi* literature we come across many types of *aqd* (contract), following no special order or a binding line of thinking. Those types of *aqd* are the following: (1) *Ijara* (leasing, tenancy), (2) *Istisnaa* (preparing and supplying the commodity on advance order), (3) *Bai* (sale and purchase), (4) *Hawala* (cession, assignment) (5) *Kafalah* (security, guarantee) (6) *Wakalah* (attorneyship) (7) *Sulh* (.........) (8) *Shirkat* (sharing) (9) *Muzarbah* (speculation) (10) *Hibah* (gift) (1) *Rehn* (mortgage (12) *Muzara'ah, Musaqat* (crop-sharing) (13) *Wadi'at* (trusting deposit) (14) *Aria* (loan) (15) *Qismah* (allotment, apportionment) (16) *Wasiat* (bequeath) (17) *Qarz* (credit) (18) *Zawaj* (marriage), etc.

Here we may face a natural question: does the *Shari'at* permit other contracts besides the ones mentioned above? According to some jurists no other contracts could be entered in to than the specified in the *Sharia'h*. The learned scholars, however, hold that other contracts too shall be as much legal and binding as those mentioned above, as long as they are within

the parameters ot the established rules and norms ot the *Shari'at* (for further detail, c.f. Masadirul Haq fil Fiqhil Islami by Sinhoori 1/62). The latter view is based on the word of the Holy Prophet (SAWS) which says: The Muslims are bound to their conditions and terms."[1]

Present age has witnessed a marked expansion and advancement in so far as the means and systems of communication are concerned. This phenomenon gave rise to newer and hitherto unknown modes of conducting the contracts and business and financial dealings. From among these is the conducting of the business and other contracts and financial dealings by Internet and other modern systems of communication. The following lines are intended to discuss the point in a fairly detailed manner.

- For the conclusion of all the contracts and dealings involving the monetary defrayal, the mutual consent of the parties constitutes a primary condition. Mutual consent in fact is an inmost activity which is expressed by the words of offer and consent, united in terms of place and time.

To quote Allauddin Karani, a renowned Hanafi jurisprudent:

> "And what is related to the place of concluding the deal is only one thing. That is the unity of the *majlis* in the meaning that the proposal and consent should take place in single *majlis*."[2]

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[1] Abu Dawood Chap. Sulh.

[2] Badaius Sanaie 4/324.

A contemporary authority, Dr. Abdur Razzaq Sinhori, writes:

> "The proposal and consent must be made during the same *majlis*, for the unity of *majlis* is a precondition for the validity of the deal. This being the concept of the sitting of concluding the business deal. And this is meant to limit the time period. Within the same period of time, it will also right to separate the consent from the proposal in order to facilitate time for the addressed person out of the dealing parties to contemplate the deal and consider all the aspects involved, and then go ahead with the deal or withdraw himself from concluding it."[1]

Having furnished the preliminary important points of the discussion, we will now make eight headings to discuss each point with its necessary details.

1. What is the *majlis* of *aqd?*

According to the *fuqaha* the *majlis-e- aqd* is the state in which the business parties negotiate a deal. To use another phraseology, the exchange of talk between the offering and consenting parties must be united from the time aspect. Defining the *majlis,* Dr. Wahba Zuhaili writes:

> "The sitting of deal is the state in which the parties are engaged in negotiating and concluding a deal. To use another expression, it is the unity of the talk between the dealing parties about the deal itself."[2]

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[1] Masadirul Haq fil Fiqhil Islami 2/6.

[2] al-Fiqhul Islami wa Adillatuhu 4/106.

2. What does the unity and disunity of the *majlis* mean?

Unity of time between the talks of the offering and consenting parties in termed as the unity of *majlis*. In case the exchange of talk between the parties is united but the time is different, it shall be termed to be the disunity of the *majlis*. Refereeing to the same point, the Shami writes:

> "If the *majlis*, (of talk between the parties) differs, for instance, one party made offer but the other party stood and left the place or engaged in any other work, the offer shall turn invalid, because the precondition for the unity of *majlis* is the unity of time between the offer and consent."[1]

The above-cited quotations clearly speak of that what is preconditionally required is the unity of time between the offer and consent and not necessarily the unity of place. If the unity of time between the events of offer and consent is achieved, the unity of *majlis* too shall be regarded as achieved even if the parties happen to be present at different places. This also gains strength from the fact that the Islamic jurisprudents have declared valid the dealings and transactions negotiated and concluded through writing and the exchange of messaging in which the parties stand at undeniably different places. Dr. Zuhaily has cleared this point in the following words:

"The unity of majlis does not necessarily mean be-

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[1] Hashia Ibne Abideen 4/69. al-Bahrur-Raiq 3/148.

ing the dealing parties at the same place; because it is quite possible that the parties might be concluding the deal being at different places but their talk is interlinked by any means of communication. For example, concluding the deal by telephone or correspondence. The meaning of the unity of *majlis* therefore, is the unity of the time in which these are engaged in concluding the deal." [1]

Quoting from the Khulasatul Fatawa, Ibnul Hammam has cleared the same by exemplifying as:

"Based on the unity of *majlis*, if, for example, both the parties are walking, or are on an animal and the consent occurred immediately after the offer, the sale deal shall be regarded valid. The *Khulasatul Fatawa*, with reference to the *Nawazil*, says: "If the consent is expressed after walking one or two steps it will be valid. And if the parties, for instance, are walking, the offer will undoubtedly occur on another place."[2]

In short, if the offer and consent occurred at the same time, the unity of *majlis* is achieved, even if the place of both events is different.

3. Concluding deals and transactions through Internet

There might be two possible types of conducting deals and business transactions through the Internet:

1. Each party is available at each end of the Internet using the facility for concluding the same deal. It

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[1] al-Fiqhul Islami wa Adillatuhu 4/108

[2] Qadir 5/461, Badaius Sanaie 4/325

is termed as ON LINE BUSINESS. Since in this type of transaction both the events of offer and consent occur concomitantly to facilitate the unity of *majlis*, there is no legal problem in it as long as other preconditions are properly met.

2. One party is not available on the Internet at the time when the deal is being negotiated and concluded, and the deal is to be concluded on the basis of the order received from one party and the second receives the answer thereafter. That is, the related documents are sent out to the party by way of scanning and then the answer is received in the same manner. Since the latter mode of business deal is very much similar to doing business by way of correspondence, the business deals concluded this way shall be valid.

   Discussing this point, Allama Kasani writes:

"Actually, in concluding a sale-deal one condition from one party regarding the *majlis* depends on the other side rather than hinging the other condition on the second party out side the *majlis*. This is a consensual proposition, except that one party faces the other party, or the sale deal takes place by correspondence or through the intermediary of a messenger."[1]

4. *Nikah* through the Internet

The *nikah* can't be contracted unless the proposal and consent are made in the same *majlis* before two

[1] Badaius Sanai 4/325

witnesses. To quote an authority here:

> "Besides the unity of *majlis* of proposal and consent, the presence of two witnesses is essentially required. So, if a man married a woman under the testimony of Allah and His Messenger, the marriage shall not be valid."[1]

So, if the written proposal and consent is being seen and read by the witnesses on the computer screen, it shall be sufficient to meet the condition of the witnesses. For though the witnesses are not hearing the words of the marrying man and woman, yet they are reading it and this too is enough for the purpose. This type is quite similar to conducting marriage through correspondence, in which the witnesses are able only to read their written proposal and approval. In case of the use of Internet for the purpose, the reading shall be regarded as good as the hearing. The point may well be supported by the following citation from Allauddin Kasani.

5. Is it lawful for a third person to use the deal particulars available on the Net for his own trade advantage?

There are two types of doing business on the Internet:

By using a secret system and thus barring the third person from knowing any detail of their business deals and transactions without the consent of the parties.

The other type is to use an open system. In this

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[1] Majmaul Anhar Sharh Multaqal Abhur 1/320

type a third person too may get access to the specifics of the deal. But even in this type it is almost impossible for a third party to stealthily get in to the specifics without the knowledge of the original parties.

The detail furnished above makes it quite clear that a third party can have no access to the details of the business deals concluded on the Internet without the knowledge of the original parties, nor he is able to use those details for his own business advantages. Since a third person can not get access to the deal specifics without consent from the original parties, and doing so does not involve any sort of violation of any rule of the *Shariah,* the third person is allowed to use the deal details for his own benefit. But without the consent from the original parties it shall not be lawful.

6. **Sale and purchase and business transactions by videoconferencing**

Those negotiating business transaction and sale deals by videoconferencing not only hear the words of their talk but see each other as well, even though their physical location my be different from one another. So if the offer and consent occur concomitantly, and other provisions are properly met, the deal shall be held valid, because for the validity of business transactions taking place between two physically non-present parties the unity of the time of proposal with that of the consent is a precondition. To quote Dr. Wahba Zuhaili:

> "The unity of *majlis* does not necessarily mean being transactors located in the same place. The loca-

tion of one party may some time be different from another party if a medium of connectivity unites them like telephone or correspondence. The unity of *majlis,* rather, denotes the no-distance between the events of proposal and consent during which the parties are engaged in negotiating the deal."[1]

7. Conducting sale deals through telephone

The validity or otherwise of conducting sale and purchase deals through the telephone chiefly depends on the meaning of the unity and differentness of the *majlis*. As mentioned earlier, the unity of *majlis* denotes the unity between the time of the events of offer and consent and not necessarily the unity of the places of their location. Since the telephone facilitates the unity of time between the events of proposal and consent, the phone-concluded sale deal shall be valid. But while negotiating the deal, if the talk diverted to another subject, it will amount to the change of *majlis* which will render the sale deal invalid. To quote Dr. Abdur Razzaq Sinhari:

"As for conducting business deals through telephone or any other system of communication, from the time aspect it is a deal between the two physically present parties; and between two non-present parties, if taken from their locational viewpoint. So, the rules related to both the types shall have to be considered. In this regard the Article No. 88 of the Iraqi Civil Law states the following, "Concluding the business deals through telephone or any other

[1] al-Fiqhul Islami wa Adillatuhu 4/158.

similar way shall be regarded as a deal between two present parties in so far as the time is concerned; and between two non-present parties if the place is taken into account."[1]

8. *Nikah* by telephone

So far as the *nikah* by telephone is concerned, according to the *Shariat* the proposal and consent must be made in the same sitting in presence of two witnesses. Further, if the offer and consent have been expressed orally, both the witnesses must be able to hear them. Allama Shami has pointed to this rule in his fallowing words:

> "Hearing of the offer and its approval by the witnesses is a precondition for the validity of marriage.[2]

There might be two types of concluding marriage on the telephone:

Using such an instrument which might facilitate the hearing of the exchange of the offer and consent between the parties to the witnesses. For this two ways are in current use: (a) employing more than one receivers, thereby enabling the witnesses to hear the words of offer and consent. (b) Use of a HAND-FREE set.

Using the simple phone instrument which lacks the above-mentioned facility and hence the hearing of the offer and consent is limited to the parties

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[1] al-Hamish ala Masadiril Haq fil Fiqhil Islami 2/27

[2] Raddul Muhtar 4/73

excluding others, i.e., the witnesses. As tar as the first type is concerned, if the offer is linked with the consent and both the events are heard by the witnesses, the *nikah* will be fully valid as it meets all the preconditions involved. As regards the latter type, since in it the witnesses are not able to hear the exchange of offer and consent between the parties, it shall be regarded invalid as it fails to meet the conditions of being the event of offer and consent witnessed and hared by the witnesses. The *nikah* this way, however, be concluded through the intermediary of an attorney. The offering party (either man or woman) may appoint the other party as his/her attorney who then may express his/her approval before two witnesses. But the witnesses must be aquaintant with the non-present party. If the situation is so, the marriage shall come into being. To quote Allauddin Kasani here:

> "then, the *nikah* may be concluded by way of attorneyship and correspondence as by the oral exchange of the proposal and consent, for the dealing carried out by the attorney is as good as the dealing carried out by the client himself; and the statement of the envoy is the same as of the sender."[1]

Important Note

Whole the discussion furnished above basically depends on the assumption that the unity of *majlis* de-

[1] Badaius Sanai 2/488, Khulasatul Fatawa 2/15

notes the unity ot time ot expression ot otter and consent with the possibility of difference between the location of the parties. But, on the other hand, if the concept of the unity of *majlis* is supposed to denote the unity of both the time and place, as is better suggested by most of the juristic statements, then the realizations of both the aspects of unity of *majlis* shall be required to make the business deals and marriages valid. To quote Kasani again:

> "As far as the place of concluding the deal is concerned, it must be the only one. The unity of *majlis*, in this sense, shall be realized only when both the offer and approval take place in the same sitting (of the same place). In case the *majlis* becomes different, the deal shall not be considered valid."[1]

Mujallatul Ahkamil Adlia too defines the concept of the unity of *majlis* which is good enough to suggest that the unity of *majlis* involves the unity of place as well.[2]

Abdul Razzaq Sinhori too has defined the unity of *majlis* in a much similar manner. To quote him:

> "The sitting of negotiating and concluding the deal is the place where the dealing parties are present; it begins from the issue of offer and continues till the parties are engaged in their dealing, without showing any sing of their turning back from the dealing procedure."[3]

The long and short of it is that if the concept of the

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[1] Badaius Sanai 4/324

[2] Mujallatul Ahkamil Adlia, p. 38 Article 181

[3] Masadirul Haq fil Fiqhil Islami 2/6

unity of *majlis* is taken to denote the unity of place beside the unity of time of offer and approval, then the difference shall have to be maintained between the *majlis* of the present dealing parties and the non-present parties. While the *majlis* of the present parties shall have to be united in terms of both time and place, the *majlis* of the non-present dealing parties will need not such a combined unity. Pointing to the same difference, Dr. Sinhori says:

> "That is why we have the opinion that the sitting of dealing between the present parties is different from that of the non-present parties."[1]

Whatever the denotative meaning of the unity of *majlis,* the rulings shall remain the same as furnished above.

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[1] Masadirul Haq fil Fiqhil Islam 2/73

A Glossary of select *Fiqhi* & general Islamic terms

Aqd: Transaction; deal
Aqd mu'allaq: contingent transaction
Aahaad: Solitary hadiths. A solitary hadith is a report narrated on the authority of the Prophet by one or more individuals, but whose chain of transmission does not fulfill the requirements of *tawatur*.
Aqd munjaz: immediately enforceable contract
Aqidaan: contracting parties
Aqil: sane
Aql: Sanity
*Adadiyyat***:** countable things
Ahkam: cules of *Shariah*
Ahliyyat al-ada: Legal capacity for execution
Ahliyyah: Legal capacity
Ajr: rent. wages, remuneration
Ajeer Khas: employee
Ajeer Mushtrak: independent contractor; shared worker
Ajir mithl: equitable remuneration reasonable wages
Al-ba'ir al-sharid: stray animal
Al-darb fil ardh: to make journey
Al-Hajr: interdiction; authoritive prohibition
Al-maal: property, wealth
Al-malaqih: sperm

Al-nafs: life

Al-Ruya: examination inspection

Al-Taslim: delivery

Al-wasiyyah: bequest

Amaal: acts

Amanah: trust

Amr: command

Ariyah: Commodate loan

Asl: Foundation; basis

Asl: Principle

Atah: Lunacy, partial insanity

Ayan: Plural of *ayn*

Ayn: Substance, determinate property

***Al-Istidlaal al-Murasal*:** Unrestricted reasoning; reasoning or argumentation based on unrestricted interests.

Al-Zahiriyyah: Al literalist Islamic legal school, founded in 9th Century Iraq by Dawud Khalaf and later championed by Ibn Hazm, which insists on strict adherence to the literal or apparent meaning (*zahir*) or the Qur'an and Hadith as the only source of Muslim Law.

Azimah: This term indicates the binding force of a *Shariah* rule without consideration of mitigating hard -ship.

Al-Masalih al-Mursalah: Unrestricted interests (sometimes referred to also as public interests). Interests which are not explicitly identified by any text in the Qur'an or *Sunnah* but which are generally agreed upon based on circumstances which arise in human society. Examples of unrestricted interests include the paying of roads, the setting up of admin-

istrative office to handle public needs, the use of traffic signals, the construction of sewers and waste disposal facilities, etc.

Al-Muatah: Fixed price sale; a transaction in which the buyer gives the price of the merchandise to the seller and the seller gives the merchandise to the buyer without uttering words to indicate either an offer or acceptance.

Al-Kulliyyat al-Khamsah: this term refers to the five universal and most general higher objectives (*maqasid*) for the preservation and promotion of which the *Shar'ah* commands and rules have been promulgated. They constitute what is indispensable (*daruri*), for human life and existence. They consist of the protection of religious faith (*hifz al-din*), the protection of human life (*hifz al-nafs*), the protection of intellect (*hifz al-aql*), the protection of progeny (*hifz al-nasl*) and the protection of property (*hifz al-mal*).

***Al-Munasabah*:** Appropriateness. The description of a situation in which a legal ruling and the situation upon which it is based are appropriate to each other in such a way that the ruling leads to the preservation of an interest which in explicitly recognized in the source texts for Islamic Law (i.e., the Qur'an and the *Sunnah*) and is supported by *ikma*, or the consensus of the Muslim community. An example of appropriateness would be the prohibition of alcoholic beverages (legal ruling) based on the fact that such beverages cause inebriation (the situation upon which the ruling is based), where the interest being preserved through the prohibition is the preservation of one's faculty of reason.

Baligh: Person who has attained puberty
Batil: Void, invalid
Bay'al-amanah: Trust sale
Bay'al-fasid: Irregular sale
Bay'al-gha'ib: Sale of something not seen by the par ties to a contract
Bay'al-hasat: Sale taking place through pebbles
Bay'al-haml: Sale of facts in the womb
Bay'al-inah: Buy-back agreement
Bay'al-juzaf: Sale of food stuff at random
Bay'al-kaali bi al-kaali: Sale of credit for credit
Bay'al-ma'dum: Sale of non-existent thing
Bay'al-majhul: Sale in which the object of sale its price the time of its payment and delivery remains unknown
Bay'al-mu'ajjal: Credit sale
Bay'al-muhaqalah: Sale of wheat for wheat in ear of grain.
Bay'al-mukhadarah: Sale of fruits on tree before their benefit is evident
Bay'al-mulamasah: Sale that is effective by touching a commodity
Bay'al-munabadhah: Sale of fresh fruit in exchange of dry fruits
Bay'al-muzabanah: Sale of fresh fruits for dry fruits.
Bay'al-salam: Sale with advance payment for future delivery of goods
Bay'al-wafa: Archaic sale for redemption
Bay'al-mutlaq: Sale of commodity with money
Bay'wa salaf: Selling and landing
Bayt al-mal: Treasury
Buy'ual-ayn: Sale of Objects

Bay'al-Aynah: Sale on credit; a transaction in which an item is sold on credit for one price, after which the person who originally sold it buys it back in cash from the person to whom be sold it for a lower price.

Bay'al-Gharar: A term referring to a transaction involving buying and selling in which there is an element of uncertainty concerning the price, the merchandise being purchased, the deadline for payment and/or delivery, or the ability to deliver the merchandise.

***Daman*:** A guarantee; one type of guarantee under Islamic Law is the requirement that if Party A's property is damaged while in Party B's possession, Party B must restore to Party A something identical to the damaged object or, if this is not possible, its monetary value. Other types of guarantees are also detailed in Islamic Law for differing situations.

Damin al-aml: Liability of a partner to complete the work accepted by either partner

Daam'n: Surety guarantor

Darbat al-gha'is: Divers dive

Dayn: Receivable debt; indeterminate property

Diyat: Blood money

Darurah: Necessity. A situation that requires the miti gation of a rule.

Daruriyyat (sing. Daruri): the things that are vital and indispensable for life and existence and constitute the ultimate higher objectives *(maqaasid)* of Islamic law. They occupy the highers position in the hierarchical order of Islamic vai.

Dbariab (Plur. Dhara'i): Means to an end. It may also be called wasilah.

Fahish: Grave
Fasid: Irregular
Fuduli: Self imposed agent an authorized agent
Ghabn: Lesion damage
Ghaban Fahish: Exorbitant loss suffered by a party to a contract or excessive lesion
Gharar: Uncertainty; indeterminacy
Ghasb: Usurpation
Ghasib: Usurper
Ghair lazim: Non-binding
Ghair munjaz: Minor not possessed with discretion
Farz: an obligatory religious duty
Farz-e-ain: all-binding duty
Farz-e-kifaya: non-all-binding
Fatwa (pl. Fatawa): a formal legal opinion issued by a mufti *(ijurisconsult)* based on a question posed to him by an inquiring person (called *mustafti).*
Fitrah: The original God-given nature of man.
Faqih **(pl.** *fuqaha):* A scholar of Islamic jurisprudence who concern himself with the details of Islamic legal rulings and their legal bases.
*Fiqh***:** The study and application of Islamic legal rulings as based upon detailed evidence; the corpus of practical legal rulings in Islam.
Gharar: uncertainty or risk involved in a transaction.
Heelah: (pl., *Hiyal*): Stratagem, artifice; an attempt to exploit that which is legitimate for an illegitimate purpose or aim; or, that which appears to be legitimate but is not.
Hadd: punishment prescribed in the Qur'an or *Sunnah*
Habs: Trust. It is synonymous with the term *waqf.*
*Hadd (plur. Hudud)***:** Limit, bound. In the Islamic

penal code, the term *Hadd* refers to the set of punishments that have been enunciated and determined in the *Shariah* textual sources (i.e., the Qur'an and *Sunnah* of the Prophet) both in terms of their nature, scope and quantity.

Hajiyyat: Necessary things whose realization is in tended by the *Shari'ah* for the purpose of removing hardship from human life. Next to the *daruriyyat* that constitute indispensable objectives of Islamic law and whose neglect cause severe harm to human life and existence, the *Hajiyyat* are needed for maintaining an orderly society properly governed by the law.

Hikmah: Wisdom. In Islamic jurisprudence, the term *hikmah* refers to the wise purpose or objective for which a *Shari'ah* command has been instituted, which revolves around bringing good to human beings and/or preventing harm from them. It may be used interchangeably with the term *maslahah*.

Hiyal (sing. Heelah): Tricks, stratagems, artifices. This term refers to legal devices used to exploit that which is legitimate for an illegitimate purpose or end; or, that which appears to be legitimate but is not.

Hukm: Rule, injunction, prescription.

Hukm Shar'i: the obligation-creating rule. The primary rule of the legal system. According to the majority of legal theorists, the *hukm taklifi* consists of *wajib* (obligatory act), *mandub* (recommended act), *haram* (prohibited act), makruh (disapproved act), and *mubah* (permitted act).

Hukm Wadhih: the declaratory rule. A secondary rule

of the legal system that facilitates the operation of the primary rules. It includes *sabab* (cause), *shart* (condition) and *maani* (obstacle or impediment).

***Huquq** (sing. Hqq):* Rights, entitlements.

Huquq al-Abd: The rights of man.

Huquq Allah: The rights of Allah.

Ijtihad: Independent reasoning. Technically, this term refers to the effort exerted by a qualified jurist (faqih/mujtahid) to arrive at the meaning intended by the lawgiver in the textual sources of Islamic Law and apply it to its subject-matters in the real life of human beings.

Ijaab: Making offer of something to another party

Illah: Ratio legis, cause, reason, rationale, considered to be the most important pillar of *qiyas, illah* is defined as being the attribute or quality in a human act that constitutes the ground or basis of a *Shari'ah* rule.

Istislaah: the act or process of reasoning on the basis of *maslahah.*

Istidlaal: The literal meaning of the term istidlal is to seek evidence (dalil). In the context of Islamic law, it is the pursuit of legal evidence, be it textual or otherwise, on the basis of which one may arrive at a sound ruling or judgment on this or that question or situation.

***Istihsan*:** Juristic preference. A decision, in the process of arriving at a legal decision, t refrain from applying to a given situation the same ruling which has been applied to analogous situations in favor of another ruling which is more in keeping with the higher objectives of the Law. In other words, juristic preference involves giving human interests and the objec-

tives ot the Law priority over the results ot *qiyas*, or analogical deduction.

Jama: Union, gathering together or all-comprehensiveness. A term used in the realm of Sufism to refer to a spiritual state in which the individual has so fully concentrated himself or herself on the Divine that he/she is no longer aware of any separation between the Divine and the created.

Khula: Divorce at the instance of the wife in return for a monetary compensation paid to the husband.

Jibillah: the natural state according to which Allah has created man.

***Kulliyyat* (plur. *Kulli*,** meaning universal): the uni ver-sal things constituting the ultimate higher objectives of Islamic Law.

Li'an: Oath of condemnation, imprecation. Disavowal of paternity by mutual oath of both spouses. This oath is resorted to by the husband in refutation of an accusation or *qadhf* by his wife, and by the wife in refutation of an accusation of adultery by her husband.

***Maqasid* (sin. *Maqsad*):** Literally, objectives, or pur poses, this term is frequently used alone to refer to the higher objectives of Islamic Law in general, that is, *maqasid al-Shari'ah.*

Mafsadah: Evil, harm. It is the opposite of *maslaha.*

Manaat: Basis, ground. This term is used synonymously with the term *illah.*

Majlis: sitting. In the Fiqh terminology the getting-togather of the transacting parties.

Mustahab: literally, desirable act in the religious practices.

Makruhe Tahreemi: practice held displeasing; forbidden but less than *Haraam*

Maslahah: Interest, benefit, something good.

Maslihe Mursalah: Interest or benefit that has not been regulated or qualified by a specific text and is based on a general principle of the *Shari'ah* or its spirit.

Mu'allal: A Shari'ah rule whose *illah* can be known either textually or by rational methods that are detailed by legal theorists under the heading of *masalik al-illah* (methods of establishing the effective cause) in conjunction with the discussion on *qiyas.*

Mu'amalat: Social dealings, transactions.

Mubaah: permissible

Muhallil: A man who weds an irrevocably divorced woman (*mabtutah)* with the intention of divorcing her so that her previous husband can marry her again. This type of marriage contract is called nikah al-tahlil and is prohibited in the *Shari'ah.*

Munaasabah: Appropriateness, suitability. In the technical language of the legal theorists (*ustiliyyaun*), it is a meaning in a person's act that necessitates the obligation, prohibition or permission of that act. Such a meaning is an apparent and constant attribute (*wasf*) deemed by reason to constitute the basis of the *Shari'ah* rule or command, as it is suitable (*munasib*) to the purpose of the Lawgiver in instituting that *hukm*. The purpose of the Lawgiver consists of realizing benefit (*maslahah*) or preventing harm (*mafsadah*) or of achieving both goals at the same time.

Nikah al-Muhallil: It is a marriage contract in which a man marries an irrevocably divorced woman with

the intention of divorcing her so that she can re-marry her previous husband.

Nikah al-Shighaar: This is a form of marriage in which one man gives his female ward in marriage to another man on the condition that the other man will give his ward in marriage to the first, without there being any dower except the body of the woman in exchange for that of the other. Such a contract is not allowed in the *Shari'ah.*

***Qatt*:** Certainty, based on conclusive textual or rational evidence.

Qat'i: Definitive. A legal proof is considered as qat'i when it is conclusive and denotes certainty.

Qiyas: Analogy, syllogism. In Islamic jurisprudence, *qiyas* or analogical reasoning consists of extending the rule of a specific case (called *asl*) established by the *Shari'ah* textual sources to a new case awaiting legal decision on the basis of a sound cause

Qiyas Kulli: A kind of analogy in which the hold of individual texts and specific cases in released and reasoning proceeds in line with a general principle or set of general principles derived from the Shari'ah texts considered collectively. It is also called *qiyasa mursal.*

Qubool: accepting the offer; giving consent to the offer *(ijaab)*

Qadhf: Falsely accusing someone of sexual misconduct.

Qirad: Sleeping partnership. An agreement between two people on the basis of which one of them will supply the funds while the other will undertake the work, after which whatever profits accrue will be

shared by both; however, any loss is to borne by the person who supplied the funds.

Rafidites*, or *rejectionists: A sect of *Shi'ites* who ap prove the practice of defaming the Companions. They were first referred to as *Rafidites* (Arabic, Rawafid, sing, Rafidah) because they rejected their imam, Zayd ibn Ali when he forbid them to insult Abu Bakr and Umar ibn al-Khattab.

Rukhsah (plur. *Rukhsah):* Exemption, silence. It represents the mitigation of a rule by substituting for it a more lenient one, due to some hardship.

Sadd al-Dhara'i: As a jurisprudential rule, the term sadd al-dhara'i means the prohibition of evasive legal means that is, blocking the lawful means to an unlawful end.

Shari'ah: Way, water spring, watering place, law. In Qur'anic use, the term shari'ah denotes the whole of the Divine teachings pertaining to matters of belief and conduct. In the terminology of the jurists, it refers to the body or legal commands instituted by the Qur'an and Prophetic sayings.

Sunnah: way and practice of the holy Prophet (SAWS)

Sunnate mu'akkada: an emphasized practice of the Holy Prophet (SAWS)

Sunnate ghair mu'akkada: Less emphasized practice of the Prophet (SAWS)

Sadd al-Dhara'i: The prohibition of evasive legal devices, or of anything which has the potential of leading to that which is forbidden.

Siwak: A small stick used for clearing the teeth.

***Shadhdh*:** Irregular statements; statements which are in conflict with those made by the majority of juris-

prudents.

Ta'abbud/ta' abbudi: Devotion or worship. It refers to the commands or rulings in Islamic law for which one can't provide an explanations through human reason, such as the number of rak'ahs in prayer.

Tabarru: Donation.

***Tahayyul*:** Manipulation, tricking, use of artifice.

Tahqiq al-Manat: the confirmation of the existence of the illah in the new case (far) to which a rule is to be extended through *qiyas.*

Tahsiniyyat: Embellishments, improvements. In the hierarchical order of the *Shari'ah* objectives, the *tahsiniyyat* come next to the *hajiyyat* and refer to those aspects of Islamic Law that bring comfort and ease in human life. They are not needed to such an extent that without them the law becomes inoperable or deficient and relinquishing them is not detrimental to the daruriyyat or the hajiyyat. They are meant to improve the general character of the *Shari'ah.*

Takhrij al-Manat: The *mujtahid's* derivation of the suitable attribute for the *hukm* (or *illah*) is known as *takbrij al-manat*.

***Ta'lil*:** Causation, rationalization. The act of identifying the effective cause or underlying reason (*illah*) of a *Shari'ah* command

Tanqih al-Manat: Emendation and refinement of the effective cause (*illah*) by excluding *(ilgha*) some of the attributes or states of the act from being the effective cause or ratio legis (*illah*) of the command.

Tawatur Ma'nwi: Thematic recurrence of reports.

Ta'abbud/ta'abbudi: Meaning literally, devotion or worship. Those commands or rulings in Islamic Law

for which one can't arrive at an explanation through human reason, and for which there is no known basis or occasion. Examples of such rulings include the number of *rak'ahs* of which the various ritual prayers consist, the prescribed punishments for violations such as sexual misconduct and slander, etc.

Tawatur, or tawatur al-khabar. The report of an event by a group of individuals sufficiently large and disparate that it would be impossible for them to have colluded in falsification

Tayammum: Waterless ablution. The practice of wiping the face and hands with clean earth, dust or sand with the intention of achieving ritual purity

Usul al-Fiqh: The principles or fundamentals of Islamic jurisprudence.

Wajib: obligatory command of the *Shariat* but next to the *farz.*

Waqf: Trust, endowment.

Wazi: Restraining force.

This Volume Presents select papers presented at the Twelfth and Thirteenth Fiqhi Seminars of the Islamic Fiqh Academy of India, held in 11-14 Feb, 2001, 13-16 Arpil 2001 respectively to discuss the Shariah position on the use of Internet and other systems of communication; and on concluding marriage and business transaction through these modern advanced systems

بسم الله الرحمن الرحيم

Conducting marriage and business transactions through Internet and other modern systems of communication

Questionnaire

Introduction

All the transactions and dealings involving defrayal, pecuniary or otherwise, could be conducted only on the basis of *mutual consent* expressed through *offer and acceptance*. Keeping in view the importance of the offer and acceptance, the Islamic jurisprudents have accorded fundamental import to it in connection with the proper holding of mutual transactions.

While *ijaab* (offer) stands for making an offer by a party, the *qubool* (acceptance) means accepting of that offer on the part of the second one. As a matter of rule, the event of offer and acceptance must occur in the same time. To some jurisprudents the contemporaneity of offer and acceptance is a condition for the validity of the transaction. To explain the point, the acceptance has to follow the offer immediately. The Hanafi jurisprudents, however, regard this condition as very difficult to comply in many cases. So, to them the concurrence of the event of offer and acceptance may be of two kinds: (a) actual contemporaneity; the realization of it shall only be possible if the offer is immediately

followed by acceptance. (b) Implied contemporaneity. This covers the situation when the offer is followed by the acceptance in the very sitting in which the offer was made but the acceptance does not immediately follow the offer. The acceptance, however, takes place before the sitting comes to an end. Because of the sameness of the sitting this sort of the dealing is also as much acceptable to the *Shariah* as that of the actual contemporaneity, and the minor gap involved is not considered.

In consideration to this provision, *the sameness of the place of holding the transaction or marriage* is held to be a condition. That is to say, the *offer* and the *acceptance* must take place in the same *meeting*. This condition gives rise to questions like if the transactors are traveling in a boat or in a running train, etc. and the offer and acceptance take place, will such a transaction or marriage contract be valid?

Likewise, in the Shafai jurisprudence it is also a point of discussion whether a transaction or marriage shall be valid if the act of offer and acceptance takes place between both the parties talking to each other from a distance in an open place like jungle, and whether the separation of the transacting parties by a barrier like the wall or canal will be harmful to the sameness of the sitting and transaction place.

In short, the concept of the sameness of the sitting holds special significance in so far as the realization of the business and marriage transactions. Obviously, the sameness of the sitting was considered a

condition tor the realization and ettectiveness ot the transactions to ensure that the acceptance of the transaction or marriage proposal takes place immediately after the offer is made. But the point to be considered is that the condition of the sameness of the place of meeting for transactions and marriage was intended only to ensure that no time gap occurs between the offer and acceptance taking place between the transacting parties, because, unlike the present age of advanced technology, in the earlier eyes, when the Islamic jurisprudence was undergoing its formation process, it was quite unthinkable that the acceptance might immediately follow the offer.

Now the technological advancement and invention of the marvelous systems of communication and information has virtually transformed whole the world into a home. Today we are able to effectively communicate with a person sitting thousands of miles away from us. Through the help of the telephone, Internet, etc. we now are able to make transactions even though the second party stands thousands of miles away from us.

Moreover, since the modern systems of communication have improved the connectivity beyond imagination, the scope of business, both on national and international levels, stands widened. Through the Internet and other similar systems it is fully possible for the second party to accept the offer and express his consent immediately after the first party made the offer even if the transacting parties are thousands of

miles away from each other.

Print outs of the transaction documents may also be sent to the second party by way of Internet. Likewise, the second party may send its reply as soon as it received the offer. However, despite facilitating instant connectivity between the transacting parties, the Internet can't undo the spacial distance between the parties. Therefore this remains to be considered whether the sameness of the sitting of the parties is for its own sake or it is the time connectivity between the offer and acceptance which is primarily intended by the sameness of the meeting point. This situation gives rise to the following questions which need answers:

1. What is meant by the *majlis* (sitting) and by the sameness of the sitting or difference of sitting?
2. Shall a business transaction held via the Internet be valid from the *Sharia* viewpoint?
3. If the marriage offer and acceptance on the Internet is witnessed and monitored by two witnesses, will such an offer and acceptance suffice for the validity of the marriage?
4. Besides considering the normal aspects of the sale and purchase on the Net, there might be other aspects which also deserve consideration. For example, a third person may get access to the two-party business details and thus may earn more benefit than the actual transactors. The question is: will it be right for a third party to do so?
5. What is the *Sharia* position on the business transactions held by the video conferencing? Notably, the

video conferencing not just enables the transacting parties talk to each other, even they see each other quite clearly. More importantly, the detail of the whole video conferencing and online dealings is fully recorded and saved, always open to be accessed by the parties any time.

6. What about the business transactions by telephoning?

7. Could the *nikaah* be contracted on the telephone? In other words, shall the marriage offer and acceptance made on the telephone be valid from the *Sharia* viewpoint? And, likewise, if the offer and acceptance made by the parties are witnessed by two witnesses who are hearing the words of offer and acceptance, will the transactors and the witnesses be considered sharing the same sitting? In case the offer and acceptance on telephone are not sufficient for contracting the marriage, could the *nikaah* be held on telephone by proxy? If so, what would be the possible sort of contracting it?

The above seven are the questions which constituted the questionnaire furnished to the *ulama* in India and abroad.

Conducting transactions and marriage through modern systems of communication

Decisions

(Following are the decisions at which the Islamic Fiqh Academy of India arrived after a prolonged written and oral discussion and the exchange of views from the ulama on international level.)

1. The term *majlis* (sitting) stands for the state in which the transactors conduct their transaction. While the sameness of the *majlis* is intended to bring the contemporaneity between the offer and acceptance, the difference of sittings shall be applied to cover the state of transaction in which the contemporaneity of the time of offer and acceptance is missing.
2. (a) In business transactions the offer and acceptance made by telephone or video conferencing shall be valid. Likewise, if the transacting parties exist on the Net at the same time and the offer is immediately followed by the acceptance on the part of the other party, the transaction shall be considered valid and the transactors to be sharing the same *majlis*.

(b) If the offer is made on the Net by the first party

and the second party was not available on the other side of the Net and thus he received the offer later, the latter shall be required to accept it (if he so wishes) as soon as he/she read the offer. This way of transaction shall be considered the one taking place by way of correspondence.

3. If the seller and the purchaser used a secret code to maintain secrecy about their transaction, it will be quite unlawful for a third person to try to gain access to the details of the transaction. Getting access to a secret transaction may be right only if it is feared to suppress any one's right to preemption or any other legal right of any one else's.
4. The matter of *nikaah* is subtler than the business transactions. For it involves an aspect of worship, and requires two witnesses. So, the *nikaah* and its offer and acceptance can't be conducted on the Net, phone or videoconferencing. However an agent may be appointed through the party, who will accept the offer on behalf of his/her client in presence of two witnesses. The witnesses must be acquainted with the non-present client. Or, his/her name be mentioned with his/her parentage at the time the offer and acceptance are made.

Conducting marriage and business transactions through modern systems of communications

Exposition of the theme
and
abstracts of the answers received in reply to the questionnaire

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The questionnaire furnished to the Ulama and Islamic scholars with respect to conducting the business transactions and marriage through Internet and other modern systems of communication primarily centers round three points:

Firstly, what is meant by the unity and disunity of the sitting from the technical point of view and for what it is intended? This point holds special import because of that the term *majlis* (sitting) has been accorded very much significance with its repeated mention in the perspective of conducting business transactions. The unity or disunity of the *majlis* directly affects the offer and acceptance. Hence this question)

Secondly, the position of Islamic *shariah* on the use of Internet as well as other advanced systems of communication to conduct business transactions.

Thirdly, what is the position of the *shariah* on conducting marriage through Internet, telephone and video conferencing? Although the questions are separate, it, however, seems fit to put here the gist of the papers received in response to the questionnaire and their arguments according to the sequence of the questions.

Majlis (sitting) and its sameness and otherness

As far as the sameness or otherness of the sitting is concerned, it is obviously related to the terminological definition of the *majlis* (sitting) itself. Concerning the definition of the *majlis* there are two viewpoints. The first defines the *majlis* to be the sameness of place of meeting of the transacting parties. So have viewed the following scholars:

1. Mufti Zakir Hasan Nomani
2. Ml. Abu Sufyan Miftahi
3. Ml. Bahauddin (Kerala)
4. Ml. Mustafa Qasmi
5. Ml. Asrarul Haq Sabili
6. Ml. Abdul Rahim (Kashmir)
7. Ml. Niyaz Ahmad
8. Abdul Hamid (of Tayyib pur).

Maulana. Abul Ass Wahidi too seems to favour the same view. According to this view, the sameness of the *majlis* means that the place of offer and acceptance

should be the same, and atter the expression ot the acceptance nothing should follow implying the contrary. This view is predicated upon the juristic expressions which clearly employ the term *majlis* (sitting) and *makaan* (place).

To explain this point Ml. Asrarul Haq Sabili has cites some juristic expressions speaking of that the otherness of the sitting shall be referred to the common accepted usage of the people. Ml. Nayaaz Ahmad Tayyib Puri has cited the narration of Abdullah bin Umar, often cited by scholars to establish the right to discretion of *majlis,* to argue in favour of the view. The argument is based on that the narration contains the word *tafarraqa* (separation), and most jurisprudents have gone to interpret the separation to be the physical separation of the transacting parties.

The other viewpoint, on the other hand, is that the *majlis* is the state in which the event of offer and acceptance takes place aside from the fact that the transactors happen to share the same *majlis* or be in separate *majlises.* According to the adherents of this view, the sameness of the *majlis* means a time connectivity between the *offer* and *acceptance.* Otherness of the *majlis,* on the contrary, is applied to the lack of time connectivity between the offer and acceptance. To use another expression, the sameness or otherness of the *majlis* is based on the time connectivity between the offer and acceptance rather than the physical existence of the transacting parties on the same place. This view is held by the following *Ulama:*

1. Ml. Atiq Ahmad (of Basti)
2. Ml. Muhammad Azami
3. Dr. Abdul Azim Islahi
4. Dr. S. Qudratullah Baqvi
5. Mufti Shaukat Qasmi
6. Ml. Khalid Saifullah Rahmani

Ml. Md Nafie Arifi, Ml. Mujtaba Hasan Qasmi and Ml. Md Umar Abidin Qasmi (all scholars in the department of Specialization in Jurisprudence, Hyderabad) too subscribe to the same view. Ml. Ubaidullah Asadi olds that the concept of *majlis* requires neither sameness of place nor the sameness of the time. It, rather, implies the knowledge and awareness between the transacting parties. On the face it, this view seems different from both the views put above, yet the explanation of the view, furnished by the Maulana himself, establishes that it is much closer to the second viewpoint.

As far as the base of the second viewpoint is concerned, Ml. Atiq Ahmad has argued with the juristic principle: *Correspondence is like speaking to the second party*. Ml. Khursheed Ahmad Azami and Ml. Muhammad Azami have based their contention on the expressions of Dr. Mustafa Zarqa and Dr. Wahba Zuhaili which define the sitting of transaction (*majlise aqd*) as: *the majlis of transaction is the state in which the transactors existed while carrying out the transaction practically*. Similarly, Ml. Md. Shaukat Qasmi has cited the following text from al-Bahrur Raiq:

"The sameness of *majlis* is required in making the

offer and its acceptance rather than the *majlis* of the transactors."

Ml. Md. Nafie Arifi and Ml. Md. Umar Abideen have based their argument on the following words which occur in Fathul Qadeer, Bahrul Raiq, Shami etc.

"The condition for the sameness of the *majlis* is the sameness of time (of offer and acceptance."

As far as I think, the second viewpoint concerning the definition of *majlis* and its sameness and otherness is more correct and consistent with the fundamental principles of the Islamic *Shariah*. The following points might be offered as indicative of this viewpoint:

1. According to the express statements of the Qur'an and *Sunnah* the mutual agreement of the transacting parties is the prerequisite for a transaction. To quote here the words of the Qur'an:

"O those who believe, eat not up your property among yourselves in vanities: but let there be amongst you traffic and trade by mutual consent." (4:29)

Since the consent is the act of the human heart, with no direct access to it by anyone else, the Muslim jurisprudents have derived three important points from the above cited verse. First, one party should make the offer. Second, the second party should express his/her consent in respect of the offer made. Third, the use of the verb implying mutual agreement in the *ayat* amply speaks of that there must be a time relatedness between the offer and its acceptance. During the past ages it was quite unimaginable to think of

the time relatedness between the otter and acceptance unless the place of offer and acceptance was the same. Hence the foregoing jurisprudents expressed the sameness of the point of meeting as the only option to ensure the time relatedness between the offer and acceptance. As far as the Qur'an and *Hadith* are concerned, there is hardly anything to especially mention the sameness of the point of meeting as condition for the time relatedness between offer and acceptance. Obviously, it will be quite imprudent for the *ulama* to keep themselves restricted only to the traditional means and systems. Instead, they shall be required to employ the contemporary, advanced systems to attain the objectives of the Islamic *Sharia*. In the present age we possess such advanced systems of communication which are capable of bringing into effect the time relatedness between the offer and acceptance in spite of the difference of the *majlises*. Therefore, now there seems no need to hold the sameness of the place of meeting as a condition for the realization of time relatedness between the offer and acceptance.

2. There are more than one juristic expression which say that the main point is the time relatedness between the offer and acceptance. discussing a similar problem, Allama Shami syas:

> "... The condition for the sameness of the *majlis* is the time unity."

Similarly, talking about transacting by letter and correspondence, Ibne Nujaim (of Egypt) writes:

> "The unity of *majlis* is that the transactors are present and the event of offer and acceptance takes

place in single *majlis* in the way that there is a time unity between the *majlis* of offer and acceptance rather than that of the transactors themselves. For the pre-requite for the relatedness between the two events is the time unity. For the sake of ease for both the transactors the *majlis* is held to be the place of union of the transacting parties."[1]

3. In the juridical literature we came across the expressions maintaining the sameness of the *majlis* despite there is an obvious difference between place of offer and acceptance. For instance, if two persons walking on foot or traveling by a conveyance inter into a transaction and one party makes offer and the second party, which has naturally moved out of the first place, accepts it, the transaction shall come into being. To the same point has pointed Ibne Hammam in his following words:

"Undoubtedly, if both the transactors are walking, the acceptance of the offer will occur on a place indubitably different from the first place." [1]

A similar point is also worth consideration. If a party happens to be inside the room while the second one on the roof, and then occurs the offer and acceptance between the two, the business transaction will come into effect, if the place distance causes no ambiguity of speech between the two.

"The transaction will come into effect if both the parties are seeing each other and there is no fear of

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[1] al-Bahrur Raiq 3/83.

[1] Fathul Qadeer 5/461

> ambiguity of speech to be exchanged between the two parties." [1]

The offer and acceptance will be considered valid even if a not much bigger canal occurs between the two parties.

Having cited many examples of the kind, Ibne Nujaim comments on the point as follows:

> "In situations like these my opinion is that if the place distance is not feared to cause ambiguity of speech between the transacting parties, the transaction will come into effect. If otherwise, the transaction shall be held void."[2]

Since in the earlier times it was too difficult to think of a place distance to maintain the time unity different from the ones mentioned in the examples put above, the foregoing jurisprudents could not go beyond their contemporary situations. Still, these examples are enough to establish that the condition of the unity of place for offer and acceptance is neither expressed by the *shariah*, nor it is an objective of the *sharia* in itself. In fact, what is required is to ensure the mutual agreement of the transacting parties, and for the same reason the earlier jurisprudents, purely out of their inference, had defined the *majlis* keeping in view their contemporary situations. Otherwise, it stands already established that the transaction may take place even if the place of offer is different from that of acceptance.

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[1] al-Bahrul Raiq 5/454

[2] al-Bahrul Raiq 5/454

Keeping those tacts in mind, it is recommended to hold the transactions the offer and acceptance of which takes place in the same time but not at the same sitting as valid. For it is quite possible today to maintain the unity of time between the offer and acceptance without that the parties are found physically in the same *majlis*.

Conducting business transactions on Internet, video and telephone

The second problem is related to the use of modern advanced systems of communication for conducting the marriage and business transactions. This problem has been subdivided into four questions: First, could the business transactions be conducted through the Internet? Second, could the business transactions be conducted through videoconferencing? Third, what about conducting business transactions by telephone? Fourth, is it lawful for a third person to make secret access to the details of the transaction which has taken place between two parties?

- So far as the sale and purchase through the Internet is concerned, Ml. Niyaz Ahmad (of Tayyabpur) tends to the unlawfulness of it chiefly because it is prone to deception. The rest participants, however, are agreed on the lawfulness of conducting business transaction through Internet, some out of them put conditions though. Ml. Muhammad Azami holds that there must appear full addresses of the transacting parties on the business documents and the documents must be signed by the transactors. Ml. Abdur Rahim Kashmiri has opined that the transactors must recognize each other. Otherwise the transaction

shall not be valid. To Ml. Abul Ass Wahidi, Internet transactions are quite valid provided there is no fear of deception and defrauding. Dr. S. Qudratullah is of the view that the transaction shall be lawful only if it is based on the certified documents. Mr. Umar Afzal (of USA) has expressed that such a transaction carries full legal bearing.

According to the opinion of Ml. Ubaidullah Asadi, Mufti Shaukat Ali Qasmi and Ml. Asrarul Haq Sabili, conducting the business transactions through the Internet facility is the same as doing through writing. That is, the acceptance shall have to be expressed as soon as the second party receives the offer document from the first one, and that sitting shall be regarded as of the offer and acceptance. Ml. Atiq Ahmad Bastawi holds that as soon as one party made offer on the Net, the second party will be required to express his acceptance and approval on the other side so as to maintain the unity of time between both the events. To the opinion of Ml. Mujtaba Hasan Qasmi and the writer of these lines, the offer and acceptance might be of two sorts: one is that both the parties happen to be present on the Net at both ends. If so, the second party will be required to accept the offer immediately. For such an offer and acceptance is very much similar to that of the face to face. The other is that the first party made the offer on the Net but the second one is not available on the other end. In such a case, the second party shall be required to react to the offer as soon as

he/she received it. In tact the second sort is almost the same as of that taking place between two non-present transactors.

The view of Ml. Ubaidullah Asadi, Mufti Shaukat Ali Qasmi and Ml. Asrarul Haq Sabili is principally based on the juridical fact that the business transactions may as much be carried out by correspondence as by mutual talk, as the jurisprudents have expressed in detail. To my opinion it is important to keep in mind the difference between transacting face-to—face and by way of correspondence, the two possible sorts of transaction on the Net. As far the fear of deception, the adherents to the view of the validity of the Internet transactions too must have considered the point. If the fear of deception is more likely, the transaction will not be lawful. As it is known, both the transactors on the Net may get substantial identity of each other as well as the required details about the item to be sold and purchased through the Net itself. Through the Net itself the first party may ascertain whether there exists the required balance in the bank account of the party. Even the act of defrayal too may be carried out by the Net. In short, the Internet facilitates complete access to every detail of the transaction conducted. So, it goes without saying that no business transaction on the Net could be held acceptable to the *Sharia* as long as the occurrence of dupery is likely.

- So far as the offer and acceptance through the video conferencing is concerned, all the participants, excepting Ml. Abdur Rahim of Kashmir,

hold it lawfully valid. Their base arguments are much the same, that is, both the parties shall be considered to be sharing the single sitting, as both are able to see and talk to each other, even though they happen to be physically in different places. Some other scholars, however, tend to explain it in terms of transaction by writing. So, there is no need at all for the transactors to attend the same sitting. Such a condition is applicable only in holding the transaction face-to-face. In the opinion of these *ulama* and scholars holding the business transaction through video conferencing is more akin to transacting by correspondence rather than that of face-to-face.

As for Ml. Abdur Rahim Kashiri's viewpoint, it is primarily predicated on the assumption that the video has been invented chiefly for the sake of *fun and entertainment*. Hence unfit to be employed to carryout lawful business transactions. However, on consideration it will appear that this contention bears no connection with the question in hand. This is a different question whether it is lawful to use the video and videophone or not. The question here is to determine the validity or otherwise of the transaction thus made. On the face of it, the transactions should be legally effective as it facilitates a full connectivity between the offer and acceptance.

- So far as the sale transaction by telephone are concerned, all the participants and the writers are unanimous in their opinion that such a sale

transaction shall be tully valid. The supportive argument is that the sale transactions may as much be established by way of writing in absence of one party as by attending the sitting of transaction. It is of course not a precondition for the validity of the business transactions that the parties essentially sit face to face. To support this viewpoint Ml. Ubaidullah Asa'di has cited a *fatwa* of the late Mufti Mahmood Hasan. Yet, to many other contributors the parties must recognize the voices of each other. Ml. Abdul Rahim of Kashmir and Ml. Bahauddin of Kerala are of the view that the parties must be familiar with each other. In the view of Ml. Niyaz Ahmad it is essential that the buyer see the item on sale before buying it and finalizing the deal. In short, the sale and purchase deals might be finalized on the telephone. For it facilitates the time connectivity between the offer and acceptance of the item on sale, in spite of the difference of sitting and place. It is therefore observed that the business transaction conducted on the telephone carry the full validity from the *shariat* point of view, provided all other conditions regarding the sale and price are properly met.

The third question is whether it is right for a third person to make un-permitted secret access to the details of the business transaction which has taken place between two parties. There are two different viewpoints' regarding this question. Ml. Abu Sufyan

Mittahi, Ml. Abul Ass Wahidi, Ml. Shaukat Qasmi and Ml. Mufti Zakir Husain see no legal problem with it. Arguing for this view, Ml. Abul Ass Wahidi observes that it is no more than benefiting from one's own experience and ability and therefore no reason to hold it unlawful. Contrariwise, Ml. Ubaidullah As'adi, Ml. Khursheed Ahmad Azami and Ml. Muhammad Ahmad Azami hold so doing as lawful provided that it is not feared to harm the interests of the transacting parties. Ml. Baharuddin of Kerala, augmenting with the hadith *baiun ala baie akhili* (doing so in fact is a sort of selling on the sale of his brother), has observed that a third party may do so before the finalization of the deal between the parties. If the deal is final, no third person is permissible to pry into the secret details of the deal. The scholars who are against such permission contend that this is a sort of spying on others which is strictly forbidden by Allah. My opinion is that if the parties have employed the code language to maintain secrecy, it shall not be permissible for a third person to make access to the details of the deal. Such an act will indubitably constitute at once the act of spying, embezzlement and of theft of the transactors' preserved secrets. The following *hadith* is a clear indication against such immoral acts.

Abu Hurairah reported the Holy Prophet (SAWS) to have said:

> "If a person peeped inside the house of a people, they have the right to gouge out his eyes." [1]

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[1] Sahih Muslim

This hadith unambiguously outlaws the violation of other people's private matters which include somebody's secret information on the Net.

Nikah on Internet and telephone:

The third problem is whether the *Sharia* permits to conduct the marriage through the Internet and telephone. As to this question the writers and the participators stand divided into two groups, holding two different views. While Ml. Ubaidullah Asa'di, Ml. Mustafa Qasmi, Ml. Khurshid Ahmad Azami, Dr. Abdul Azim Islahi, Dr. S. Qudratullah Baqwi, Ml. Md. Nafie Arifi, Ml. Md. Umar Abideen Qasmi and Ml. Md. Zakaria Husami are of the view which holds the *nikaah* on the Internet or phone to be valid, the other group of scholars, comprising Ml. Atiq Ahmad Qasmi, Mufti Zakir Hussain, Ml. Abu Sufyan Miftahi, Ml. Md. Azami, Ml. S. Asrarul Haq Sabili, Ml. Niyaz Ahmad Abdul Hamid, Ml. Abul Ass Wahidi, Ml. Bahauddin (Kerala), Ml. Mujtaba Hasan Qasmi, Ml. Shaukat Qasmi and I (Khalid Saaifullah Rahmani), holds that the offer and acceptance of marriage can't be finalized on the Net or phone. Ml. Ubaidullah As'adi (of the first group) has also explained that holding *nikah* on the Net or telephone will essentially require that the two witnesses must be present with either one party. Otherwise, the *nikah* shall not be effective. A third view, adopted by Ml. Abdul Rahim (Kashmir), is that *nikah* on the Net or phone is permissible only if the circumstances are so coercive. However, the concept of coer-

cion seems stranger enough in the context of *nikah* and marriage.

The first group, which favours the lawfulness of the *nikah* on the Internet or telephone, bases its argumentation chiefly on the juridical wording occurring in the literature with reference to holding *nikah* by way of writing. There are many scholars with the viewpoint that lays stress on the time connectedness between the offer of marriage and its acceptance by the other party rather than on the sameness and unity of *majlis* of offer and consent. Since the Internet facilitates and instant connectivity between the parties during the same time and thus fulfills the condition of the sameness of *majlis*. Hence, the *nikah* thus conducted should be regarded valid.

To my opinion, however, it is not good enough to draw a similarity between the *nikaah* on the Net and the *nikah* by writing. For the *nikah* by way of writing in fact takes place through representation. Any party of marriage appoints somebody as his/her representative, who accepts the offer of *nikah* at his client's behest in presence of two witnesses. Thus the event of offer of marriage and its acceptance takes place in the same *majlis* in presence of the witnesses. The offer and acceptance on the Net, contrariwise, is apparently the sort of marriage coming into existence by a face-to-face proposal and acceptance. It is essentially untenable to apply the arguments for the marriage by representation to that coming into existence through the Net, if it is considered valid.

As tor the point that the Internet facilitates the unity of sitting for both the parties of marriage and hence the *nikah* thus made should be hold valid, it is doubtful. For the *nikah* is far too sensitive an issue compared to other ones. Excepting marriage, all other things are primarily lawful until the law declares otherwise. But the human chastity is primarily prohibited for all unless it is permitted by the law. That is why the offer and its acceptance should essentially be attended by two witnesses who must hear the exchange of words of offer and consent uttered by the parties. It must be remembered that the condition of two witnesses for marriage has been expressly mentioned by the primary sources of the Islamic law and hence a unanimously agreed upon issue in the *ummah*. To cite here only two authorities.

> "The two witnesses must hear the words of both the parties at the same time." [1]
>
> "The provision (of the validity of marriage) is that it has to be held in presence of two free and responsible witnesses who may essentially hear the words of both the parties."2

Moreover, dependence on the Internet in the matter of offer and acceptance of marriage is often feared to be confused. Business transactions are naturally different from marriage. They are less feared to suffer confusion. Even if so happens, the damages may be repaired so easily as the business transactions are

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[1] Qazi Khan (on the footnotes of the Fatawa Alamgiri) vol.1/332

[2] Raddul Muhtar 4/84.

not so much sensitive as the marriage is. Furthermore, according to the Maliki, Shafai and Hanbali jurisprudents, marriage can't come into existence by way of writing and representation. But the business transactions may thus be conducted. Considering all these facts, it seems more accurate to say that the marriage on Internet alone shall not be valid and acceptable to the Islamic *Sharia't*. However, a representative of marriage may be appointed on behalf of either party to accept on the Net the marriage proposal at his/her client's behest in presence two witnesses.

The same viewpoint has been adopted by the majority of the participators and writers concerning the *nikah* by telephone, even if the instrument is so advanced as to facilitate the hearing of the offer and acceptance for the witnesses and the witnesses are present with either one party. Although the offer of marriage and its acceptance require only time connectivity yet the witnesses must attend physically the event of offer of marriage by one party and its acceptance by the other.

Contrary to this observation, there are many scholars who favour the validity of *nikah* carried out by telephone provided the instrument is HAND FREE the hearing on which may be shared by others side by side the direct hearer, and either one party is attended by the witnesses. The scholars subscribing to this viewpoint include the following:

1. Ml. Ubaidullah Asa'di
2. Ml. Md. Azami

3. Dr. Qudratullah Baqwi
4. Dr. Abdul Azim Islahi
5. Ml. Md. Nafei Arifi
6. Ml. Mujtaba Hasan Qasmi
7. Ml. Md. Umar Abideen Qasmi

These scholars too apply the argument of the *nikah* by writing to the *nikah* by phone, as do the supporters of the *nikah* on the Internet, and hence attracts the same objections. The *nikah* by an attorney may come into existence by telephone, fax, Internet or by any other system of communication. For the attorney speaks of the words of offer or acceptance (as the case may be) on behalf of his client and the witnesses may easily hear the words uttered by him, as required by the *shariat*. And, as the jurisprudents have expressed, if one party is not available at the sitting and has appointed an attorney to make the offer or accept it, the non-present party must be known and identified by the witnesses, either through their personal acquaintance with him/her or by way of mentioning his/her name with his/her parentage and address.

To cut the long story short, the modern advanced systems of communication are no more than the means and instruments. As far as the worship and the acts of devotion are concerned, the Law-giver himself has expressly mentioned their objectives as well as their way of doing. For both the things are directly intended. Therefore, they can't be subjected to any change or alteration. As for the business and other dealings, the *shariat* has not strictly defined the means and instru-

ments to be employed leaving them to the human discretion. The objects, however, have specifically been mentioned. The former, quite obviously, is constantly subject to change and inventional development. But the objectives are set, never subject to change and alteration.

Moreover, it should also be kept in mind that *nikah* involves an aspect of worship side by side being a contract. Business transactions, on the other hand, purely deals with no aspect of worship. This subtle difference demands that the *nikah* be carried out with more scrupulousness and extra care than required for the business transactions.

Conducting Business deals through modern systems of communication

Dr. Wahaba Zuhaili

Introductory remarks

Today the pecuniary and other types of deals are being carried out by the help of the modern, advanced systems of communication like, telephone, telegraph, fax, telefax, Internet, wireless, etc. The increasing use of these systems has dictated the need to determine the position of the *shariat* on the deals and transactions thus carried out. In order to level the ground for a systemic discussion and arrive at a well-thought conclusion, I have kept before me most things mentioned by the great Islamic jurisprudents of the past. Since such things are commonly known to our university students and scholars, they will be mentioned only in brief.

Wording of transaction:

The words uttered by the transactors to finalize a business deal are meant to denote their inner intention and meaning. And their intentions, expressed through the words, replace the act of give and take, of pointing or writing. Thus the wording of transacting is nothing more than the offer and acceptance, which stands for their mutual agreement *vis-à-vis* the transaction. To the legal experts, the wording in fact is the expression of

the parties' inner intentions.

To finalize the deal every type of words denoting lexically or by usage the holding of the transaction may be employed, apart from that it involves words, act, indication or writing.[1] These words usually are *bi-etu* (I bought), *ishtaraitu* (I purchased), *rahantu/ ir-tahantu* (I mortgaged), *wahabtu* (I granted), *qabiltu* (I ac-cepted), *tazawwajtu* or *zawwajtu* (I married). The act of giving and taking in fact is practically a mutual trans-action and denotes the parties' mutual agreement without uttering the words of offer and acceptance.[2]

The purchaser pays the price and takes posses-sion of the article. Practical transactions, i.e., without uttering formal words, irrespective of that the article is cheaper or valuable. Being in common use, this sort of transaction carries full legal weight according to the majority viewpoint. But the case of the marriage is en-tirely different; all the Islamic jurisprudents are unanimously agreed upon the fact that the marriage shall not come into existence only with practical point-ers. The importance of marriage, its lasting effects on woman and the extraordinary importance of the chas-tity and honour all demand that the marriage must come into existence only by the expressed proposal from one party and its acceptance from the other one. Only deaf and dumb persons may establish their mar-riage contract by an intelligible pointing. The *Shariat* has granted this concession to such people in order to facilitate the right to marriage for them. This exception is based on the juridical principle:

"Intelligible signs ot the deat and dumb are like the statement by the tongue."[3]

To the Maliki and Hambali jurisprudents, the intelligible and usually common signs may establish the business deals as the signs are more denotative and meaningful than the act of give and take held by the jurists to be sufficient for the validity of the transaction.[4]

Dealing by writing

"Dealing by writing is like the dealing by speaking, [5]*"* is a juridical principle. According to the Hanafi and Maliki viewpoint, business deals may be conducted by writing apart from that the parties are able to speak or are speech-impaired, and whether they are sharing the same sitting or are located at different places. The language used should be intelligible to both the parties and the writing must be clear and readable, bearing the signature of the addresser, mentioning clearly the name and other identifying details of the addressee. In case the writing is not clear and readable as, for example, writing on water or air, or is written in an unfamiliar way or bears no signature of the addresser, [6] the transaction will not come into being. The following example will illustrate the way of dealing by writing: A person sent a letter to another to the effect that "I sold my car to you for the …", and the second party received the letter and, after going through it, said, in the same sitting, "I accepted it", the transaction will be binding. But if he left the *sitting* without pronouncing

the word ot acceptance or made a gesture denoting non-acceptance, or accepted thereafter, the acceptance shall bear no legal effect.

Dealing by sending message:

If one party sends a message to another making the offer and proposal, such a message shall be considered like the letter. The sitting in which the latter received the message shall be regarded to be the sitting of transaction, and the acceptance or otherwise must be expressed in the same sitting. If the second party left the sitting without reacting to the offer, the offer will automatically be rendered invalid. That is, the sitting to be considered is the one in which the party received the message. Let me illustrate it by an example: one party sends a person to another party to convey his message that he has sold his … to him for so and so price and after receiving the message the second party expressed his consent to the proposal in the same sitting; the deal will come into existence.

In fact, the task of a messenger is weaker than that of the attorney. While the messenger is charged only to convey the message of the sender, the attorney holds the transaction in his own words on behalf of his client. In the case of the free attorneyship the attorney will be required to follow the usual way. But in case of the attorneyship is restricted by the place, language, person, place of transaction, altering the transaction, etc, the transaction between the attorney and the second party shall take place in the words of the attorney

restricted to the tormal restrictions ot the protession ot atorneyship. The attorney himself shall have to meet all the conditions and legal requirements. The envoy, on the other hand, is not restricted at all as his task is no more than the dispatching of the original message to the second party. The documents of transfer of the ownership shall be provided both to the client and the addressed alike.

As far as the *nikah* by writing in presence of both the parties in the same sitting is concerned, it could be held only if the parties are speech-impaired. It is because of the fact that the offer and consent of the *nikah* must be attended and heard by two just witnesses. The condition may well be met if the *nikah* is being carried out in the form of writing. To the Shafai and Hambali viewpoint any transaction could be conducted by writing only if the parties are not present in the sitting of transaction. Their presence in the sitting of transaction obviates the need of writing. The transactors' availability makes them able to execute their transaction by speaking, and therefore the transaction will not come into being without uttering the words of offer and consent by their tongues.[7]

Provisions of making offer and acceptance:

The jurisprudents have mentioned three provisions regarding the offer and acceptance. They are as follows: [8]

1. The words expressing the offer and acceptance of the transaction must be clear, with no ambiguity

whatsoever. To explain the point, the words to be employed for the purpose of making the offer of a business deal and its acceptance must clearly speak of the purpose, lexically or normally. Since the intention is an act of heart and the nature of transaction may differ from case to case in so far as its subject and details, the words employed should be decisive in their meaning and denotation so as to determine the nature of the transaction. Without this it would obviously be difficult to hold the transacting parties liable to the transaction. It is worth noting that there are no specific words to denote the transaction except marriage, which requires two witnesses or some specific transactions whose completion depends on taking possession, like trust, borrowing, mortgage, gift, loan, etc. It is because of the fact the expressional uniformity is not juridically required in transactions other than the exceptions just made; the meaning and intentions are considered rather than the outer shell of the words. So if 'gift' is used in place of exchange, the transaction of sale and purchase shall be right and like wise, the marriage contract may come into existence even if the 'gift' is used, provided the dower is given away to the women.

2. The acceptance must accord with the offer in terms of the object of sale and the way of offering and in the quantity of prices to be paid in exchange of the item sold. Accordance between the

otter and acceptance might be either real or implicational. The real is that the buyer said "I sold that item to you for ten rupees", for example, and the second party responded, "I purchased it for ten rupees". As regards the implicational accordance, it is that the purchaser accepts the offer for a price more than the one mentioned and demanded by the seller. To take on example, the buyer said: "I bought that item for fifteen rupees", for example and the purchaser responded "I purchased that item for twenty rupees." Or, a woman says: "I gave myself to you in marriage for a dower of one hundred rupees", for instance, and the man responded: I accepted the marriage contract with you for one hundred and fifty rupees. Such an agreement between the offer and acceptance is termed implicational, because the price or the dower asked by the offering party falls implicationally under the sum mentioned by the second party. Although the implicational accordance, apparently disagreement, is a blessing, yet the purchaser shall not be held liable to pay the sum of money but the one originally demanded by the first party. So far as the extra sum is concerned, it shall entirely be up to the acceptance of the second party in the sitting of transaction. If first party accepted the expressed sum, the second party shall be liable to pay it. For no wealth or property falls under one's ownership except in the case of legacy.

This is the Hanafites' view. The Shafaites, on the other hand, hold that any discrepancy between the original wording of the offer and acceptance shall negate the. [9]

If the acceptance does not agree with the offer in terms of the object on sale, the transaction will bear no legal effect. To elaborate the point, if the seller said, 'I sold my so and so piece of land to you', but the second party responded, 'I accepted the piece of land located near it, or, 'I purchased a half of the land for half the price,' the sale deal will have no legal effect as the second party has treated the item on sale in pieces. The purchaser is never authorized to treat the item on sale as pieces accepting one piece and rejecting the others. Likewise, a discord between the transacting parties in terms of the quantity of price is liable to invalidate the deal. In the same way, if the discord is about the nature of the currency, for example, the buyer offered his item for the current value currency but the purchaser accepted the item for the later value currency, or, likewise, the buyer offered his item to take this price after one month but the purchaser accepted it for a period even later the deal will bear no legal effect. For the offer and acceptance lack the agreement, and the deal will require the fresh offer and acceptance.

3. The third provision is that the offer must immediately be followed by the acceptance, either in the same sitting as attended by both the parties or in the sitting in which the non-present party is familiar with the second party. Immediate con-

nectivity between the otter made by the and acceptance may also be realized in the way that the purchaser under stood words of offer and then nothing appeared from either side to suggest otherwise.

Sitting of Transaction

The term *sitting of transaction* is applied to the state where and when the transaction between the parties takes place, or to the state of the exchange of words between the parties regarding the deal. There are three conditions for the contemporaneity of offer with the acceptance:

(i) Both the parties attend the same sitting.

(ii) Neither party reveals his falling back from the deal.

(iii) The first party does not withdraw his/her offer before the second party's expressing of his/her acceptance.

Further explanation of these three conditions follows:

As far as the first condition is concerned, the offer and acceptance must be made in the same sitting. The offer shall form the part of the deal only if it is followed by the acceptance. If sitting of acceptance turned different from that of the offer, the deal shall not come into existence. For example, the first party addressed the purchaser as: "I sold/rented out this house for so and so", and then he moved away from the sitting to another room or to a distance as less as

two or three meters before the second party's acceptance, the first sitting shall be considered ended. Now, if the second party expressed his approval to the offer, the transaction will bear no legal effect. Now the deal will require fresh offer and acceptance to be made. For the words of offer lose their legal effect if not followed by acceptance in the same sitting.

Immediate acceptance

Excepting the Shafaites, the majority of the Islamic jurisprudents holds that the second party is not obliged to immediately express his approval of the offer of the first party. (10)

For, quite naturally, the second party is always in need of contemplation over all aspects of the deal. The condition of immediateness is bound to exclude every possibility of contemplation. The unity of sitting is just enough for this purpose, even though it is taken up to the last moment of its continuance. The sitting essentially includes various things; the condition of immediateness narrows down the latitude of deliberation for the second party and the deal will tend to lose without a substantial expediency. If he chooses to reject the deal, he is feared to deprive himself of the deal; and if he expresses his approval without due deliberation, he is feared to suffer a loss in the deal. The second party, therefore, has to be provided with a sufficient time to contemplate the possible positive and negative aspects of the deal. The term *sitting* is comprehensive enough to accommodate all such concepts. For the ease of the

people, and to avert the possible loss ot the transactors, whole the time of the sitting shall be regarded a single unit.

From among the Shafai jurisprudents al Ramali says:

"The offer must immediately be followed by acceptance. Even a shorter sentence related by no way to the transaction uttered by the purchaser, and will negate the contemporaneity between the offer and acceptance, and hence no transaction will take place. However, if the words like *bismillah, al-Hamdu lillah, as-Salatu was-salamu ala Rasoolillah* (meaning respectively: in the name of Allaah, all praise are due to Allah, blessing and peace be on the Messenger of Allah) precede the expression of acceptance and approval, the deal will come into effect."(11) Ramali's this observation is in line with the view which stresses the immediateness of approval against the offer. Other Shafaites, however, have defined the immediateness of approval against the offer to be according to the commonly accepted usage. It means that a slighter gap will do no harm to the deal; and it is the longer gap which is bound to harm the deal as it, in most cases, tends to backing out from the deal. This explanation brings the Shafai view much closer to the majority view.

The second condition means that nothing should appear from both the transactors between the offer and approval which might suggest to either party's turning back from the transaction. Both the parties are therefore required to strictly keep their talk around the

transaction itself, interrupting it with no word denotative of withdrawal. To explain it in other words, if the seller left the sitting before the expression of approval from the purchaser, or the second party left the sitting before the expression of approval; or both the parties engaged themselves in a thing related by no way to the transaction, - in all such cases the offer made by the first party shall turn invalid, and now even if the acceptance of the second party shall do no good to the deal. For the validity of offer entirely rests on the acceptance which has to follow it within the same sitting. The entire space of the sitting has been given to the parties to make the offer and acceptance within it so as to ease for them the difficulty they might otherwise have faced.

Change of Sitting:

So far as the sameness or the otherness of the sitting is concerned, it shall be decided in consonance with the people's commoner usage. The acceptance shall be regarded valid only if it occurred within the time frame of the same sitting; no sort of acceptance shall bear validity whatsoever if it is took place beyond the time frame of the sitting of offer. The rule established is that the offer shall be legally valid if it pronounced any time within the same sitting as long as there occurs nothing within the sitting which might denote the contrary. The Hanafites have exemplified this rule with that if a party made the offer, but the second party left the sitting before pronouncing his ac-

ceptance or engaged himselt in an activity which essentially denotes the change of the sitting and then pronounced acceptance, in such a case the transaction will be considered invalid. For one's standing up from the sitting obviously means that one has pulled oneself back from the deal. (12)

On the other hand, the Shafites, who adhere to the immediateness of acceptance, are of the opinion that the separation of the transacting parties shall be decided in accordance with the common usage of the people. For the things left undefined by the Shariat are referred to the common accepted usage.

To exemplify the separation, moving out of the second party from the house or room to the courtyard or doing vice versa, moving out from a small house to the road, climbing the roof, walking more steps than three (if the deal is being carried out while standing). However, if the transaction is being carried out while walking the sitting shall be considered the same even if it took much longer time as long as the talk centered round the transaction itself.

The third condition is that the acceptance must be pronounced before the first party's backing out of his offer. In case the approval was pronounced after the first party backed out from his offer, the approval shall carry no legal effect.

<u>Backing out of the deal</u>

Barring the Malikites, the majority of the jurisprudents hold that the first party has the right to back

out trom his otter betore the second party's expressing his approval of the offer. If so, the offer shall turn meaningless. The deal can't come into being if the offer is not followed by the approval. The first party is absolutely free to dispose of his/her possessions. The rights of ownership may be transferred to the second party only through the first party's expression of volition. Since the proprietary rights are far stronger than the transferred ones, and in the event of a contradiction between the two, the first shall prevail as they are absolutely proved, whereas the second party's rights are totally dependent on the first party's volition. In short, it is the mutual agreement of the parties on which rests the validity of the transactions. (13)

As for the Malikite standpoint, their majority holds that the first party shall be required to stick to his offer unless the second party turns away from expressing his approval or the sitting is over. They say that the first party's offer has proved a right to the second party against first party's possessions, and now it is up to him either to use or abandon his right. If he expresses his approval to the offer, the deal shall come into being, and if he stays away from acceptance, no transactions will take place. Therefore, backing out from the offer shall not invalidate the offer. (14)

Fixing the time for approval

According to the Malikites if the first party puts the second party on a specified term to express his approval, the latter shall be required to react within the

stipulated time. As it is put above, the Malikites don't allow the first party to back out from his offer on his own. He may do so only if the second party chooses to stay away from pronouncing his approval. Thus, stipulation of a time on the part of the first party will automatically make him stick to his offer. More succinctly, if the first party limits his offer by a specific time – hours, one day or more – he shall be required to stick to his commitment even if the sitting is over. Obviously, this falls under the general principle of the *Shariat* based on the saying of the Holy Prophet (SAWS) recorded by the Tirmizi and reported by Umar b. Auf, "Muslims must stick to their conditions." Such a condition by no way is discordant with the stipulations of the deal.

Transactions not requiring the sameness of the sitting

The sameness of the sitting, as already mentioned, is an important condition for the validity of all dealings except the following three ones:

(i) Bequest (which means making changes to the property of a person after his death). Quite obviously, there is no possibility of the sameness of the sitting between the offer from the *devisor* and the acceptance from the *devisee* during the lifetime of the former, for it is not lawful for the later to do so. Thus the acceptance will take place only after the death of the devisor.

(ii) Bequeathing of a person to some one else to look after the children and descendents of the former after

his death. The devisee is not under legal obligation to pronounce his acceptance during the life time of the devisor. The devisee will obviously be able to execute the will of the deviser only after his death, even if he expressed his approval during the life time of the deviser. In this case too the sameness of the sitting of the parties turns meaningless.

- Attorneyship (*wikalat*) (transferring of one's authority of protecting the property to a person during the proprietor's life time).

Since the *wikalat* comes from concept of facilitation of ease, its offer to a person and his acceptance need not the sameness of the sitting at all. The attorney might express his approval by word or by his act, that is to say, by practically engaging himself with the responsibilities he has been charged with by his client. Attorneyship may also be given to a person who is not present in the sitting, and the attorney shall be at liberty to take up his task on the strength of his knowledge in this regard. [15]

The Hambalites hold that all unbinding deals that don't require immediate approval of the second party shall be regarded valid like the attorneyship, as partnership, *muzarabat, muzaara't, musaqaat,* trust, commission, etc.

Executing deals by telephone, wireless etc.

In executing the deals the sameness of the sitting doesn't always require that the transacting parties share the same place. For it is quite possible to attain

time connectivity between the dealing parties without being present at the same place for example by the use of telephone, wireless, or executing the deals by way of correspondence. As a matter of fact, the unity of sitting means the unity of the time during which the parties are engaged in executing their transaction. Likewise, the sitting of transition stands for the sitting in which the transacting parties talk about the transaction. Hence the juridical principle, "Sitting brings the scattered together." [16] As long as the talk on the phone or wireless is about the transaction, the time shall be regarded of the sitting of transaction. As soon as the parties diverse their talk to any other topic, the sitting shall terminate. Likewise, if the transaction is being carried out by sending the letter, telex, fax etc, or by sending a message through a messenger, the sitting of transaction shall be regarded the one in which the letter or messenger approached the second party. The messenger is the representative of the sender; he shall be regarded the same as the party itself. If the representative gave approval, the deal shall come into being. If the non-present party is addressed by the first party through the intermediary of a letter, telegram, fax, etc., it is as if the party was addressed directly. If the addressed party expressed has approval during the sitting in which he happened to receive the message, the deal shall come into being. But if he deferred to pronounce his approval to subsequent sitting, the offer of the first party shall turn meaningless and the deal will fail.

The detail furnished above establishes the rule that while for the present transactors the sitting shall be regarded the time in which the offer was made, for the non-present transactors it shall be the time when the party received the message, letter, telephone, fax etc. The intermediary has the right to pull out of his offer in presence of two witnesses, provided it occurred prior to the expression of approval (verbally or by way of letter, telegraph etc.) by the second party. The majority of the Malikites, however, holds that the offering party has no right to withdraw his offer without giving a sufficient chance to the second party.

In case the transaction is being executed through the modern advanced systems of communication, the parties shall be required to meet all the conditions except the sameness of the place of deal. The transactors are better advised not to use the Internet to execute important dealings as the website is comparatively more prone to be approached and abused by an unknown person. It is also noteworthy that while, according to the Hanafites, the offer and approval of marriage has to be attended by two witnesses. To the majority of the *Fuqaha* it will be sufficient if the woman's guardian hears the offer and approval by the man and woman. Marriage is a very delicate matter. In most cases there are little possibilities of a prior introduction between the man and woman. It is therefore unwise to execute the marriage contract through modern systems of communication.

Time for the completions of the transactions between non-present parties

There is a general consensus amongst the jurisprudents that in the case of the non-present transactors the transaction shall come into being merely on the strength of announcement of approval by the second party, apart from that the transaction is being carried out through the modern advanced systems of communication or by traditional ways, even if the first party continues to be unaware of that. [17] Here is an illustrative example. One party, by phone or wireless, said to the second party, "I sold my house or that car to you," and the second party replied, "I accepted it", the deal will come into existence even if the offering party failed to know the approval of the second party by any reason, e.g., due to a discontinuation of the connectivity or any other similar reason. Likewise, if the transacting parties sent message to each other or used the wireless, telex, fax, etc. for the execution of the deal, or decided to marry, the deal, or marriage, will come into being as soon as the addressed party pronounced his approval, apart from that the offering party knew it or not. However, with the view to remove possible ambiguities the practice goes that as a first step the telex or fax of offer is sent on the part of the first party, and then follows the telex or fax of approval on behalf of the addressed party, and then follows the exchange of the documents of the completion of the transaction.

Interestingly, the same practice has also been

recognized by articles ot the contemporary laws. About the dealing between the non-present transactors the Egyptian civil law's article No. 91 says: "Expression of the intent shall be effective when the addressed party came to know it. His receiving of the addressees' intent shall be considered a sign of his knowledge unless found otherwise". Notably, there are some Hanafi jurists, like Al-Nasafi and Ibne Kamal Pasha, who hold that the present transactors must have the knowledge of each other's offer and approval.

As for the dealing between two non-present transactors, the article No. 97 says:

> "The time and place for the completion of the deal shall be considered the one in which the offering party came to know the approval of the second party. Unless specified or agreed otherwise legally, it shall be maintained that the offering party has got the knowledge of the place and time in which the approval occurred and he could know it."

To my opinion, in such a case of dealing the offering party must have the knowledge of the second party's approval. It is because the commercial dealings are very complex despite the advancement of the modern systems of communications. It is safer to ensure the smooth dealing between the parties and is more tactful to make the approving party stay committed to his approval. The failure of the offering party to know the approval of the second party may cause serious problems to him. To the same view subscribes Dr Abdul Razzaq al-Sinhauri. [18]

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Conducting transactions, commercial deals through Internet and other modern systems of communication

By Dr. Nooruddin Mukhtaar al-Khadimi

Defining Internet [1]

Internet is a scientific term which gained currency towards the end of the twentieth century. It is actually the contraction of the INTERNATIONAL NETWORK. In short, the Internet is a worldwide network of interconnected computer sets, which enables the user to connect himself to any computer of the Net. It is also termed as the World Wide informative network. [2]

Although Internet plays a very active role in the areas of culture, economy, information, research, education, health, politics, peace, travel, entertainment: etc., [3] it is being particularly employed in the field of economic, commercial and monetary activities. In fact, such were the factors which contributed very much to the origin and development of the Internet, with the result that today it has become possible to execute commercial, marketing and similar other dealings through the Internet, either the second party expresses his approval verbally immediately after the offer was made to him, or giving his approval through a letter.

In this sort ot dealing the otter and acceptance between the parties must be realized in the form of the exchange of correspondence, signatures or addressing. Notably, a commercial dealing between two parties may take place by communication as well as by the exchange of documents. [4] In the following lines I will try to state the position of the *Shari'ah* on both the sorts of dealings through the Net: direct communication between transacting parties or through the exchange of the documents of offer and approval.

Commercial dealing through e-mail

Commercial transaction carried out through e-mail is regarded by *Fuqaha* as those carried out by writing and the exchange of letters. However, it must meet all the conditions and provisions set by the *shariat*. There exists a general consensus amongst the Fuqaha about the validity of the commercial transactions carried out by writing or the exchange of the documents of offer and acceptance.

However, the *nikah* contract will not come into being this way. [5]

Marghinani says: "writing is like speaking." [6] Dasuqi has written:

> "A commercial dealing carried out by the exchange of words or documents of offer and approval between the parties or by the speech of a party and the writing of another one shall be valid." [7]

A clear writing, which in fact is the expression of the intent and a sign of agreement between the trans-

acting parties, is absolutely like the speech. To quote the Dasuqi's footnotes:

> "A business transaction comes into being with the acts denoting the agreement of the parties like writing, signing or the exchange of merchandise and price". [8]

This view is preferable, for it is founded on the arguments supplied by the *Fuqaha*. More importantly, it is fully consistent with the rulings and objectives of the dealings related to the realization of the agreement between the dealing parties, excluding all the possibilities of misappropriation, fraud and harm to other parties. It eases the exchange of immediate interests between the parties, making possible for them to achieve the benefits of the dealing. If such ways of dealing are not allowed, it will be quite impossible to evade the mischief's and harms to be unavoidably suffered in the absence of such legal remedies. Further more, this view is more akin to the spirit of the contemporary time and abler to keep abreast of the modern advanced age. This will give a boost to the Islamic developmental system and enhance its activism if it is permitted to enter into the walks of life in lines with the positive and constructive mechanisms with a fuller consideration to the sound principles of the Islamic *Shariah*. Conversely, if this view is excluded outright, and the commercial transaction by e-mail is held impermissible, whole the Islamic developmental system is bound to suffer retreat. It is because of the fact that the Internet has now become a phenomenal tool and is being employed particularly in the areas of trade and com-

merce unsparingly, exerting its increasing impact on the economy of the nations and states.

Giving preference to this viewpoint, the Jaddah-based Islamic *Fiqh* Academy says in its judgment as follows (9)

> "The Sixth Seminar of the Islamic *Fiqh* Academy held in Jaddah (KSA) in March 14, 15, 1990 to discuss the stand of the *shariat* on employing the modern advanced systems of communication to bring clarity and swiftness to the execution of the financial and commercial dealings, properly meeting all the conditions like oral or written communication, pointing, exchange of the message in case the transaction is between two non-present parties, and the sameness of the sitting of deal, consistent with the time of offer and approval with nothing to denote the contrary from either end, having gone through the written discussions of the *ulama* the Academy received on the topic, has arrived at the following decisions:
>
> • If a deal between two non-present parties, who are not available at one place, nor seeing or hearing each other's words, is being carried out by correspondence, or the exchange of letters or messages, through telegraph, telex fax or the computer screen, the deal shall come into being as soon as the offer reached the second party and he pronounced his approval of the offer.
>
> • If the parties present at separate places are dealing at the same time through telephone or wireless, the dealing shall be considered as the

one between the present parties, and to it shall be applied all the related juridical details.

- If the first party has made an offer through these means for a limited time, the party shall be required to remain committed to his offer till the specified time expires. In other words, he shall have no right to pull out his offer.
- Marriage, is not included in the rule mentioned above. For it comes into existence only if its offer and approval is attended by two witnesses. Similarly, the *bai sarf* and the *bai salam* too are not included in it. It is because of that the farmer sort of sale involves immediate possession of the purchaser and the latter advance defrayal of the total cost of the merchandise.
- The cases of dealing having the possibility of defect, fraud or mistake in transaction shall be referred to the general principles of affirmation.[9]

Conditions for the letters to be written by Internet:

The messages or letters to be sent out by the Internet must be clear and vivid in their content, written in legible language. This is to exclude all possibilities of mistake, fraud, misappropriation and similar other sorts of gulping down other people's belongings and properties without a legal right. To ensure the safety of both the parties, the documents must bear the signatures, names, addresses and stamps of the parties.

To quote here the *al-Mausutul Fiqhiaya*.

> "The states of the transactors and the nature of the transactions may make difference to the concept of *majlis* (sitting). A generally recognized prerequisite for the validity of transaction is that the offer and its approval must take place during the same sitting. If the sitting of offer is different from that of approval, the transaction shall be invalid. It is noteworthy that if the parties are selling face to face, such a *majlis* of transaction shall primarily be different from the situation where the transactors are non-present. Likewise, the dealing which is carried out through the exchange of words of offer and approval between the parties shall be at variance with the offer and approval to be executed through the exchange of message and correspondence."

If the writing is not clear and legible, due to any reason like the paper is not good to give clear print, or the ink is dim, or the power supply is disconnected and the Internet failed to work, the above mentioned conditions shall be considered wanting, the deal shall not come into existence. Likewise, if the writing is not good enough to be read, or the ink or paper is swiftly perishable, or the system ceases to functions properly the deal shall not be valid. For such a defective proceeding is feared to deprive the parties of their rights and interests due to the perishing of their concerned documents.

On electronic signature

Signature is a personal symbol which a person

makes on a document as a sign of his approval of it. [10] This is made either by writing, signing or the thumb impression. These are traditionally known types of personal signing. There might be similar other ways to be used as a sign of one's commitment to the contents of a document. Electronic signature is also a way of singing a document. Actually it is secret code or a definite token which denotes the agreement of the signee. [11] This type of signature too is as much useful for the purpose mentioned above as the traditional signature, and is quite known amongst the people who generally use electronic systems of communication for their commercial dealings. As a rule of the Islamic law the established usage between a community is regarded as condition. To quote an authority here. "A deal of buying and selling shall come into existence by an act which denotes the consent of the parties, be it a word, writing or indication from one or both the parties. [12]

Determining the sitting of transaction, if it is being carried out with the exchange of writing on the Net

> "The statements of the *Fuqaha* clearly speak of the fact that if the transaction is taking place between two non-presents parties, the sitting of transaction shall be considered the sitting in which the second party expressed his approval, in writing or by an envoy." [13]

Another authority says:

> "If the buyer has sent a letter or message to a non-present party to the effect that he has sold his house

etc to him, and the addressed party expressed his approval, the deal shall take place". [14]

Going by those statements, the sitting of approval shall be held the sitting of dealing, in case the dealing is taking place on the Net. In other words, if the sender's message was received by the addressed, and he expressed his approval, the transaction shall take place. It is as if the first party came to the second party in person and made the offer. On receiving the message or writing of the offering party, if something appeared from the addressed party to denote his disapproval of the offer, or he expressed nothing and left the place, the *majlis* shall terminate and the deal will not take place. With dealing on the Net the message must reach the very party itself; it is not just enough that a message got to the memory of the computer of the addressed party without his knowledge. It is quite possible that the addressed party come to know the offer after a time. If such an offer is held binding, it might cause great harm to the rights and interests of the second party. The offering party, however, has the right to make a time limit for his offer, before the expiry of which he can't withdraw. If this time limit expired and the addressed party failed to react to the offer, he may withdraw his offer. [15]

In this mode of transaction it is not a condition that the first party (sender) receive information about the approval of the second & (addressed) party. The jurisprudents have clearly stated that the business deal between two non-present parties will take place as

soon as the addressed party gives its approval. [16]

The law puts no restraints on the offering party if he specifies a time period for his offer, beyond which the offer shall no longer be open. Since such conditions violate no rule of the *Sharia*, nor harms the purpose and intent of the deal, the offering party is permitted to introduce conditions, thereby to save himself from the possible harms of a delayed approval. As for the expression of approval, a full consideration shall be given to the *urf* and the accepted usage, like intimating the offering party by a letter or within a specific time. Also there might be other ways for the same purpose set as established usage by the people transacting through the Net and other modern systems of communication. Customs and established *urfs* also are held acceptable by the *shariah*.

Discretion of the parties transiting by the exchange of messages on the Net

This discretion means that the parties transacting through the exchange of messages on the Net have the right to issue or withdraw the offer. Discretion of the seller and buyer has been treated in greater detail in the Islamic *Fiqh*. It has many kinds: discretion of the sitting, discretion of the conditions, discretion of misappropriation, discretion of fault, discretion of fraud, etc. to name only a few. 17 The law provides all such types of discretion to both the offering and approving parties. Further detail follows:

Discretion of withdrawing the offer

According to the majority view of the jurisprudents, the party making the offer via the Net has the right to withdraw the offer before the second party's pronouncing his approval. The Maliki jurisprudents, however, hold otherwise. They say that once the *mujib* (offering party) made the offer, he loses the right of withdrawing the offer even if before the second party's expressing his approval. It is because of that the offer of the first party has proved the right of acceptance as well as of turning down the offer to the addressed party, and his withdrawal shall not invalidate the offer. 18

Notably, there are more details about the rights of the offering party if the offer is made using the past tense, or the matter is related to charities and non-obligatory offers.

Discretion of the addressed party

If the second party received the offer via the Net in a sitting, he has the right either to accept or reject the offer within the time of the sitting and before the withdrawal of the offer on behalf of the offering party.[19]

Renewal of the message received by the Net:

Earlier jurisprudents as well as the contemporary *ulama* generally mention the renewal of the written offer in another sitting. To quote an authority here:

"In his book, al-Mabsoot, Shaikhul Islam Kha-

wahar Zada wrote:

"Address and writing are similar to each other. The only difference is that in the event of verbal address to a woman present in the sitting if she failed to express her approval in the same sitting vis-à-vis the offer, and expressed it later in another sitting, the marriage shall not take place. If, on the other hand, the offer of marriage has been made in writing and the woman read it in the same sitting but did not express her approval, and gave her consent to the proposal in another sitting in presence of two witnesses who were able to hear her consent and the contents of the letter, the marriage shall take place. It is because of the fact that the woman has received the proposal in writing which exists even in the second sitting. It is as if the proposal was made again in the second sitting, and quite obviously, the verbal proposal will lose its legal effect in another sitting. Apparently, the business transactors too must have the same facility. This goes contrary to what is stated in the al-Hidayah. The point needs further deliberation. [20]

About the renewal of the written offer in another sitting, the contemporary *ulama* hold two different views: [21]

According to a view the renewal of the written offer can't be done in another sitting. To this view subscribe Prof. Md. Abu Zuhra and Dr. Md. Yusuf Musa.

Another view is held by Shaikh Ali al Khafif. Commenting on the view of the authors of the al-Hidayah and its commentary, Fathul Qadir, he says:

"To my view, the said ruling is relatively more ap-

> plicable to the business transactions as compared with the marriage. For, obviously, the laws of business transaction are not so much tight and uncompromising as are those of marriage. Going by this the addressed party receiving the offer in writing must have the right to read it in the first sitting without expressing his approval of the offer, leaving it to be read again in the next sittings and then to express his approval. Thus, each time reading should be treated as the sitting of transaction it self." [22]

The way of the renewal of the offer sent via the Net shall be that the addressed party read it in the same sitting in which he happened to receive it and express his approval. Shall a business transaction take place by such a delayed approval? To our opinion the time of reading the message shall be considered to be the sitting, as is the view of Sheikh Ali al Khaafif noted above. Being the Internet a highly fast-working and cheaper device of connectivity, renewal of offer on it is not feared to cause a harmful delay. Inordinate delay, however, is not under question. Any longer delay which may harm the interests of the offering party shall have to be avoided.

In short, repetition of offer on the Net entails no legal fault as long as it is not harmful to the rights and interests of the offering party. It is also a sort of the renewal of the written message to remind the addressed party of the offer by telephone and draw his attention to contemplate the offer and react to it positively or otherwise.

Sale and purchase by telephone

Telephone too is from among the modern system of communication. It enables the users to communicate directly even if the communicators happen to be present far distantly. Today we have two sorts of telephone instruments: the one which conveys only the words of the speaker to the hearer. This is the oldest and the commonest system at the disposal of the users. The other one is the videophone. This one is the most up-to-date and is becoming increasingly popular. In the following lines we shall separately discuss the position of the *Shariah* vis-à-vis the financial and business dealings taking place through both these types of instruments.

Sale and purchase by audio phone

If the telephone instrument is able to transmit the voice of the speaker to the hearer clearly, the sale and purchase may be done by it, because the *fuqaha* have expressly said that any business deal might take place between the parties existing somewhat distantly provided they are able to hear each other with no ambiguity, even though unable to see each other. [23]

Similarly, it takes place between the parties who stood separated by veil or cover. [24] As a matter of rule, distance, non-presence, cover or inability to see each other will do no harm to the validity of the deal concluded. Through the telephone nor impedes the realization of the mutual agreement of the parties. Tele-

phone is no more than a system ot transmitting the speaker's voice to the hearer not a new instrument of expressing one's will. [25]

It is an established juristic principle that in the cases of financial dealings the customs and the commoner usages carry full legal weight in the eye of the *Shariah*. Today it is quite common that individuals, groups, companies, corporations even the governments generally employ the telephone to talk and conduct their financial dealings, and there is nothing in the rules of the *shariat* which contradict these usages. Rather, those usages are completely in consonance with the general objectives of the *Shariat*. They aim at nothing except easing the dealing, achieving benefits and delivering the rights whom they actually belong to, and prevent fraud, embezzlement, unjust dealings and similar other evils of business from taking place.

Sittings of transaction in the event of sale and purchase by telephone

In the event of telephonic conversation the sitting of transaction shall be considered from making the offer and the expression of consent by the selling and purchasing parties, and during the time no party shall have the right to withdraw his offer or consent, even if the deal is not yet final, or the talk discontinues volitionally or otherwise. It should be noted that *the majlise aqd* shall be considered only the time during which the event of offer and consent takes place rather than the time of the whole talk about the dealing. In fact this is

very much similar to the transaction in which the second party has no option of turning down the offer as, for example, the business dealing between the parties while walking on foot or traveling by a conveyance. But if both the parties are sitting together, they are at liberty to make or reject the offer and consent. 26 In case the talk breaks before the second party expresses his consent and he wishes to do the deal, the talk may be resumed. But now the order of the parties will take a reverse term; the offering party shall become the consenting one and the consenting one shall occupy the place of the offering one and the deal shall hang on the acceptance of the second party. This is based on the opinion of those jurisprudents who hold that any party may be the offering one. [27]

More flexibly, the sitting of transaction may include whole the telephone-talk as long as it centres round the deal, with offer and consent side by side, with no deviational break from the topic. Any slighter break will do no harm to the deal unless the talk denotes a deviation from the deal. [28] What talk is denotative of deviation and what is not shall only be decided by the practical usage of people, as the *Fuqaha* have expressly stated. [29]

Sale and purchase by telephone and discretion of the sitting of transaction

The preferable view is that the parties of the telephonic transaction have the right to accept or reject the offer. This right shall terminate by their separation if

their talk is suggestive ot it. Physical separation ot the parties plays no role in the termination of this right unless they speak such words which denote the termination of it. Actually the telephonic transactors are physically separate from each other as they happen to be present at distant places. The *fuqaha* are generally of the view that the parties of business transaction have the right to accept or reject the offer, contending with the *Hadith* which reads: "The parties of the business transaction have the right to accept or reject the offer unless they separate, except in the case of the optional sale. This view is opposed to the Hanafi and Maliki standpoint, which completely excludes the freedom of acceptance or rejection of the offer except in the case that such a condition is already mentioned. If so, this right shall terminate by words and thus the telephonic transactional sitting will come to an end.

Business Transaction by video phone

Business transaction may be conducted by videophone provided the unity of *majlis* is ensured, with nothing to denote withdrawal of any party from transacting. In fact this type of transaction shall be regarded similar to the transaction between two parties present distantly but hearing and seeing each other. As a matter of rule, this is quite lawful if the unity of sitting is ensured and there is nothing to denote the withdrawal of either party from the transaction and other terms and conditions or met. However, any party shall be permitted to leave the *majlis* to bring anything to the

majlis related to the transaction itself. The *majlis* of transaction will terminate if anything out of the following three ones happens: [30]

(i) The talk on phone came to an end

(ii) In spite of the continuation of the talk, something occurred which denoted withdrawal of either party from the deal, and,

(iii) The transactors see each other while leaving the *majlis*.

Leaving the *majlis* will make no difference if it is in connection with the preparation for the deal.

Conducting *nikah* by Internet, telephone etc.

For the *nikah* what is originally required is that the offer and approval should be expressed verbally. For it is the verbal expression which may better express the intention of the parties towards marriage and the rights and obligations the marriage contract ensues. This is a generally agreed upon juristic view vis-à-vis the speaking people. As regards the speech-impaired people, their marriage shall be contracted by writing and the writing will stand for the verbal expression. This is a unanimously agreed upon view. Another equally important thing in marriage is that the parties themselves attend the sitting of marriage. And, keeping in view the noble aims and higher objectives of *nikah*, certitude of the parties' identification, strengthening of the mutual ties and ensuring the fulfillment of the mutual rights and obligation, the same is more preferable, wise and discreet.

Nikah of the non-present party by writing

About the marriage of the non-present, speaking party there are two views:

First, the marriage contract will not take place because the writing on behalf of a non-present party is not sufficient for the purpose. This is the standpoint of the Malikites, [31] Shafiates, [32] according to one narration, and of the Hambalites, according to one narration.[33] The arguments are as follows:

(a) Writing is an allusion which is as much useful for other things as for marriage; *nikah* will come into existence only by the words which might be testified.

(b) Marriage is a matter of special caution as compared to other contracts and deeds, and the verbal pronouncement is more discreet course as compared to the writing.

Second, *nikah* may properly take place by writing. This is the opinion of the Hanafites, [34] Shafaites, according to another narration [35], and of the Hambalites, [36] as suggested by another narration. Brief contention of this view is that writing also is as much useful for any purpose at the time of unavoidable need as verbal pronouncement and is an expression of the writer's intention and volition. This latter view is obviously preferable. To encapsulate it, the *nikah* will properly take place by writing provided that the witnesses are aware with the contents thereof and bear witness to the event of approval. For the witness is a condition for *nikah*

and the otter and approval must be witnessed by two witnesses. This condition will remain unfulfilled if the witnessing is restricted to only offer or approval. Given this extraordinary importance of the witness, the better course of action for *nikah* is the presence of both the parties at one place in one time. This is more apt to ensure the proper achievement of the higher objectives of marriage, its motives, bilateral identification of the parties and so on. In the case of *nikah* between the non-present parties, contrariwise, the presence will strictly remain restricted to their imagination and hearing could never be a substitute for seeing. Still, in spite of the limitations of the *nikah* by writing, the *shariah* holds it permissible in considerations to various circumstantial compulsions. The proper course of action for the *nikah* by writing, would be bearing witness to the event of offering. The event of approving too should be witnessed by two witnesses who hear the approval of the party to the offer. Thus witnessed, the offering party will have no chance of turning back from the offer under the excuse of any unauthorized change inserted into the text of offer by someone else.

This opinion is of Shafaites, who hold that both the events of offer and acceptance should be witnessed separately by two separate witnesses. 37 We espouse the Shafai standpoint as it is more discreet to exclude the possibilities of withdrawal of the offer from the offering party. Only witness to the contents of the written message could hardly deter the offering party from turning back from the offer.

nikah by writing and the question of the sitting of *nikah*

As regards the sitting of *nikah* in the event of the *nikah* by writing, this will be the sitting in which the written message of offer is read out and witnessed by the witnesses and the approval of the addressed party is announced. Receiving the message by the addressed party is by no means the sitting of *nikah* because the *nikah* can never take place unless is witnessed by two witnesses. The addressed party has the right to leave the *majlis* where he happened to receive the written proposal and present the witnesses to his approval in another sitting.38

Contracting *nikah* by Internet or telephone

In case of the *nikah* by the Internet, the written message, voice of the speaker and his image all will involve in the event. By videophone, however, only the image and the voice of the speaker involve. In the former case, the written message shall be sent out via computer and will appear on the other party's TV screen, of which the print out might be obtained. To explain the former, the parties will talk directly to each other in the chat room or via the website which copies both the voice and the image of the speaker. This involves the use of modern advanced technology. In the event of the use of videophone the voice as well as the image of the speaker will appear on the display unit; if the simple phone is being used only the voice of the

speaker is heard. For a direct talk between the parties and to copy both the voices and the images of the speakers, the use of the modern advanced communicational technology is unavoidable. Of note is the point that what is common to all the communicational systems is that they offer communicative connectivity between the distantly located persons. The connectivity offered by the telephone and Internet between two persons might be of the same time as well as different in time if the message is sent out in writing. For, quite obviously, the addressed party can receive the message only after some time. On this ground, the *nikah* by telephone or Internet is arguably very much similar to *nikah* by writing between two non-present parties, which is permitted by the Hanafites as well as by some other *Fuqaha* on condition that the contents of the written offer and the approval of the addressed party be witnessed at least by two witnesses. The same rule shall be applied to the *nikah* coming into being by modern advanced communicational systems like fax, e-mail, telegraph and telex. *Nikah* by even more advanced communicational systems like videophone, Internet etc. too will obviously be governed by the same rule; far they directly convey both the voice and the images of the speaking parties. Notably, the element of directness in the *nikah* by the latter type of communicational systems transforms the sitting of *nikah* into the one having the marrying parties and the witnesses in it even though they physically are distantly located. They may hear and see each other. This

lessens the possibilities of deceiving, fallacy and turning back from the *offer*. We come across a similar case in the Kashful Qana of Imam Bahuti, "Suppose some people approach a person and ask him to contract marriage between so-and-so man and woman, and he said, "I contract this marriage for example, on one thousand. And, receiving the information, the husband pronounced his approval; the marriage shall take place according to the Hambali jurisprudent Abu Talib.[39]

***Majlis* of *nikah* in the event of *nikah* by Internet, telephone**

In the event of the *nikah* by the Internet, telephone, etc. the sitting of *nikah* shall be regarded the one in which the approval is expressed. To be more particular, if the offering party sent his written message by fax, telex, telephone or by Internet alongwith his image and voice, addressing therein that he wants to give his daughter in marriage to so and so person, and the addressed party expressed his approval towards the proposal, the *nikah* will take place by this expression. The only provision is that the events of offer and approval be attended by the witnesses.

Conducting business transactions by fax, telegraph and correspondence

Fax is an instrument, [40] which is capable to copy the documents perfectly according to the original with as much quick performance as talking on the telephone. Sale and purchase by fax will be regarded similar to

the business deal taking place by writing between two non-present parties. The condition is that the writing should be clear, signed and properly stamped. Besides this condition, all other conditions prescribed by *shariat* to normal business deals shall invariably be applicable to this type of the sale and purchase. Many contemporary Muslim scholars have elaborately discussed these issues regarding the sale and purchase by modern advanced communicational systems to be similar to business transaction by writing or correspondence between two non-present parties. This writer, therefore, thinks it unnecessary to go into further detail.

Sale and purchase by videoconferencing

Videoconferencing stands for the meeting between the people who hold communication by the video system. This meeting may be direct, as by the videophone, Internet or satellite. It may also be indirect, as, for example, is the case with the recorded videocassettes which are used according to need. In the following lines we shall attempt to state the rule of the *Shari'at* vis-à-vis the sale and purchase by direct and indirect meetings.

Sale and purchase by direct videoconferencing

In direct videoconferencing the transacting parties are united in time but different in their physical locations. They are fully able to see each other and hold communication. Such a type of business transaction

talls under the category ot transaction taking place between so distantly located parties as to see and hear each other directly. The *Fuqaha* have held it a valid type of business transaction. To quote the juristical authorities:

> "If they are so distantly located as to hold business transaction by resorting to shouting, the transaction will take place, and this is a generally agreed upon proposition." [41]

> "If they conducted a meeting and hung the certain or put a cover between themselves, the right to hold or withhold the trade deal will remain unchanged, even if the period gets longer." [42]

Needles to say, if the sale and purchase is valid between two so distantly located parties as to unable to see and hear each other as are able to see and hear each other directly, shall be even more obviously permissible for the latter mode of business is even more certain to ensure the agreement of the parties. This point gives an edge to the latter mode of business over the former one. Given the facts as above, this mode of business transactions is quite permitted even if it lacks the unity of place between the dealing parties.

The point which is invariably important to all types and modes of business is that the business deals must be based on complete transparency and agreement between the parties. Any intentional wrong doing, deceptions and taking possession of other's belongings without a legal right is bound to render the deal utterly invalid. The contemporary tendencies, increasing needs and expediencies all demand that the business

deals conducted by the modern communication facilities, like video conferencing, be held valid. The *Shariat* has full consideration towards the customs and usages not contradicting the established rules of the Islamic law. Al-Majmu, a very well known *fiqhi* text, reads: "Recourse shall have to be made to the normal usage (in things left unspecified by the *Shariah*); and if an act of sale and purchase is regarded valid by the people, the *Shariat* accepts it as such." [43]

Sitting of Transaction in the case of direct videoconferencing and the right to consent or reject the deal

So far as the right to holding of or withdrawing from the deal is concerned, it is much the same as stated under the use of videophone and image-conveying Internet system for conducting the sale and purchase deals; it therefore needs not to be repeated here. For both the situations involve the use of advanced communication technology.

Conducting sale and purchase by recorded videoconference

Unlike direct videoconference, the recorded videoconference does not convey the voice and image of the speaker in a direct way. It facilitates both these things in the recorded form offered to the second party to have his opinion on the matter. Apart from the difference of places, the recorded offer or acceptance is marked by the difference of time between the two

events ot otter and approval. This is more titting to be regarded similar to the sale and purchase deals by writing between the non-present parties, a mode of business held valid by a near-total majority of the *Fuqaha*. More importantly, the facilities of hearing and seeing the party, and its easy availability for future needs give the recorded videoconference an edge over the mode of business by writing.

In short, doing business by modern communication systems is comparatively more satisfactory provided all other conditions are properly met.

Sitting of transaction, unity of sitting and difference of sitting

Originally, the business deal should take place between the present parties by the use of clear and unambiguous words. If so, the sitting of transaction will have three components, i.e., (1) place, (2) time, and; (3) the state of getting together and separation of the parties. The sitting of transaction brings into being the offer and approval which are connected by time, place and the state of the parties. That is to say, the business deal between two present parties and the act of offering and accepting takes place during one time, on one place and one state of the parties with no distance in time or backing off of either party's from the deal. However, the sitting of transaction may sometimes miss the element of unity of the place. This happens when the transaction is between the non-present parties. Such transaction is permitted by many *ulama*

when the sitting ot transaction is united. It has to be remembered that the unity of sitting stands for inter-linking the proposal with consent in single sitting which is the condition for the validity of the deal. On the same ground the *Fuqaha* hold that the presence and non-presence of the transactors make difference to the unity of the sitting of transaction. The point is explained below:

(i) Unity of *majlis* in presence of the transactors

This means that the proposal and consent take place on the same time and place with no backing out or separation.

(ii) Unity of the *majlis-e-aqd* in the absence of transactors

It means that the act of proposing and consenting takes place in the sitting of transaction. In this case the term of sitting of transaction shall be applied only to the sitting when the consent is expressed by the party who happens to receive the offer by message or correspondence. A short distance between the event of receiving the proposal and consent by a talk unrelated to the deal will do no harm to it, as stated by al-khattab al-Maliki. [44] To the Shafai standpoint, the time difference must not be abnormally longer, even if it is caused by forgetfulness or unintentionality. According to reliable sources, the Shafai jurisprudents hold that any talk related to the deal by no way shall be harmful

to the deal apart trom that the talk is longer or shorter. 45

As far as the interlinking of the offer and consent or the unity of sitting is concerned, this shall depend only on the sitting when the consent has taken place. So, when the proposal reaches the second party, it shall be regarded as if the proposing party visited the second party in person and made the offer by his own self. In case the sitting is over, or there occurred any thing which might be regarded as withdrawal from the deal, the deal will collapse. 46

Consenting to the proposal: the question of immediateness or time distance between the two

About the questions whether a time distance between the proposal and consent is harmful to the concept of the *unity of majlis* the majority of the jurists holds that the immediateness does not constitute a condition for the validity of the consent as long as they take place within a single sitting. To use another expression, the distance between the events of offering and consenting shall do no harm to the validity of the deal if both the events take place in the same sitting. For the consenting party is always in need to have some time to ponder over the different aspects of the deal. To quote the jurist Bahuti here:

> "If the consent took place some time later when the proposal was made, the deal shall validly take place, provided both the acts of proposing and con-

senting took place in the same *majlis*."[47]

Difference of the sitting of transaction

The term *differentness* of the *majlis-e-aqd* is applied to the condition where the consent is not interlinked with the proposal in terms of time. There are many affairs and deals where this interlinkingness does not constitute a condition to their validity. Out of those the following three ones need mention.

1. *Aqd-e-wasiyyat*. In this *aqd* the *will* is accepted after the death of the *testator* and the *legatee* takes possession of the deceased's property.
2. *Aqd-e-wisaya or Isa*. It means the testator's appointing some one as caretaker to his underage children. This too shall be accepted only after the demise of the testator.
3. *Aqd-e-wakalat*. In this *aqd* the attorney is at liberty to accept it even outside the *majlis-e-aqd*. Since this type of *aqd* is unbinding, the client has the power to quash it any time.

Notes and References

1. Husain Farooq Sayyid: al-Internet: al-Shabakatul Duwalia lil Malumat p. 82, also, al-Internet wa Afaqul Bahsil Ilmi: Mufid Zaidi, p. 52, Jamalus Shirhan, al-Wasailut Talimiah wa Mustajiddatul Teknologia p. 735,739
2. Nuruddin Mukhtar al Khadimi: al-Internt wa Maqasidus Shariat wa Usooluha wa Qawaidulha, p. 10
3. Darkazli Salman Shazzi A.D.: al-Internet Tharwatu Thaqafa wal Talim p. 37, 73, al-Internet fi Khidmatil Islam: Abdul Munim al-Nahdi, p.11, A.D. Nadi Kamal Azizi: al-Internet Wasilatun wa Usloobun lit-Talimil Maftuh Dakhila Hujratil Dirasah min Bu'd p. 89, 90, al-Wasailut Talimia wa Mustajjddati Teknologia al-Talim: Dr Jamal al Shirhan p. 141, 143.
4. The direct talk by Internet is that which is carried out in the chat room etc. and the exchange of the written messages in done by way of e-mailing.
5. al-Mausuatul Fiqhia 30/209
6. Hidaya with Fathul Qadir 5/79
7. Hashia Dasuqi, alongwith al-Sharhul-Kabir of Dardir (printed on the footnote of the former book) 3/3
8. Op. cit. (with slight change)
9. Mujallah Majmail Fiqhil Islami (Jeddah) 6th session issue no. 6:2/1267,1268
10. Mujallah Shuoonil Ijtimaia, issue No. 48, p. 88 with reference to al-Tauseeq bil Kitabah, Dr Abdullah al-

Masha'l 2/658

11. Abdullah al-Masha'l Dr. al-Tauseq bil kitabah 2/661 and subsequent pages.
12. al-Sharhul Kabir & Hashiatul Dasuqi 3/3
13. al-Mausuatul Fiqhia 30/217
14. Kashaful Qana 3/148
15. Refer to the decision of the Islamic Fiqh Academy. Jeddah 54 3/6, Badaius Sanai 5/138, Kashaful Qana 3/148
16. Fathul Qadir 5/81 and subsequent pages, Badaius Sanai 5/138 Kashshaful Qana 3/148
17. al-Mulakkhasul Fiqhi, Salih al-Fauzan 2/17 and subsequent pages.
18. Mawahibul Jalil, al-Khattab 4/241, al-Fiqh alal Mazahibil Arba' 2/175
19. This is according to the Hanafis and Hambalites. To the Shafites, contrariwise, the consent must occur immediately. The Malikites permit a slight delay which can't be construed backing off from the deal. For further detail, c.f. Fathul Qadir 5/78,79, al-Majmu 9/179, al-Furooq 3/172,173
20. Hashia Ibne Abidin 4/512 and subseq. pages
21. c.f. al-Tauseeq bil Kitabat fil Fiqhil Islami wa Tatbiqatulhul Muasarah: Abdullah al-Masha'l 2/448
22. Ali al-Khafif, Ahkamul Muamlatil Malia: 1/179, (with reference to the said authority.)
23. al-Majmu 9/193, Mughni al-Muhtaj (of Khatib Shirbini 2/45)
24. al-Mughni 3/484
25. Abdul-Razzaq al-Haiati, Hukmu Ta'aqudi abra Ajhizatil Ittisalil Haditha fi Shariatil Islamia p. 18
26. op. cit. p. 25,26,30
27. al-Fiqh alal-Mazahibul Araba'a 2/157

28. al-Mausuatul Fiqhia 30/214
29. Op. cit.
30. Hukmmut Ta'aqud abra Ajhizatul Ittisalil Hadith p. 31 and thereafter.
31. Mawahib lil Khattab 3/419
32. al-Majmu 9/177,178
33. al-Bahuti, Khashful Qana 5/39
34. Hashia Ibne Abidin 3/12, Badaius Sanai 3/330
35. al-Majmu 9/177, 178
36. al-Mardavi, al-Insaaf 8/50
37. al-Majmu 9/178. According to the Hanafi viewpoint it is not a condition that the receiving of the proposal be attended by the witnesses. For the witnesses it will be just enough to hear and witness the proposal in the *majlis* of approval. For further detail, see Hashia Ibne Abideen 3/12, 13, Badaius Sanai 3/1330
38. Hashia Ibne Abideen 4/512 and sub. pages, also, Mujallah Majmaul Fiqhil Islami sixth session issue No. 6 p. 955,956
39. Kasshaful Qana 3/148
40. Abdul Razzaq Buwais Juma: Teknologial Malumat p. 35 with reference to al-Tauseeq bil Kitabah 2/647
41. al-Nawawi: al-Majmu 9/193
42. al-Mughni 3/484
43. al-Majmu 9/163, also al-Mughni 3/56/62
44. Mawahibul Jalil 4/241
45. Mughniul Muhtaj 2/5,6 and Hashia al-Qilyubi 2/154
46. al-Masuatul Fiqhia 30/218, where exist various references to the four schools of Fiqh
47. Kasshaful Qana 3/147,148
48. al-Mausuatul Fiqhia 30/218, also the decisions of the Jeddah Islamic Fiqh Academy.

Conducting business dealings via modern systems of communication

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Man has been addressed by the *Shariat* with two kinds of injunctions; first *ibadat* (the acts of worship and devotion). They are primarily meant to connect the man with Allah in a direct way, like *Namaaz*, *Saum* (fasting) Hajj (pilgrimage to the Holy House of Allah at Makkah), Zakat, Sacrifice etc. Second, *muaa'mlaat* (the customary affairs). They are meant to direct and manage the behavior of human beings towards each other: between the citizens of a country, between individuals and the State or vice versa. As far as the first category of the injunctions is concerned, they are based on the textual expressions of the *Shariat*, and no gap has been left to be filled by man on his own. To know about the acts of devotion (*Ibadaat*) we are always in need to refer to the expressions of the *shariat*. A much larger number of the *ahadith* revolves round the *Ibadaat*. Any addition to or omission from this category is extremely disapproved of and is termed to be *bid'at* (innovation). In fact prohibition is the original idea which runs through all the acts of devotion, and no act could be regarded as the act of worship unless it is based on a sound expression of the *Shariah*.

Muamalat (customary affairs), on the others hand, run along the concept of expediency and the pursuit of

legitimate interests of people. All the customary affairs meant for achieving benefit, or thought expedient in attaining good are held lawful unless they contradict the established principles of the *Shariah*. In short, unlike the acts of devotion, lawfulness runs through the customary affairs.

In the sphere of the *muamalaat*, the Law of Allah has laid down some broad principles and restrictions, under the circle of which every way may be applied to achieve those interests and the general good. Many things are held unlawful and prohibited in this sphere like usury, gambling and the sale and purchase of the things which carry no value in the eye of the *Shariat*. Similarly, the law of God stipulates that all dealings of the sale and purchase must be kept free from all such ambiguities and un-clarities which are feared to bring differences and discord between the parties. Mutual agreement is the foremost condition for all the dealings and the transactions of sale and purchase or other social contracts. The Holy Qur'an has laid down the principle of mutual agreement of the parties in the following words:

> "O those who believe! Don't eat up your wealth among yourselves by unjust ways: except there be trade by mutual agreement." [1]

Agreement is an act of heart. It is hard to be noticed by anyone else what is the will of a person regarding a matter. There are only two ways which might stand for one's agreement towards a thing: one's verbal expression of agreement, or an action of the kind. For the ex-

pression ot the agreement the Law-giver has laid down no specific way. However, the *fuqaha* have tried to specify this according to the differing grades of importance of the transactions and dealings. Since marriage is directly related to the human chastity and this aspect lends to the marriage exclusive importance, the agreement to this act must be expressed by words. In the terminology of the *shariat* the expressing of the mutual agreement of marriage is termed to be *ijaab-o-qubool.* As for the financial dealings, any usual and known way may be applied to express the agreement. According to most *fuqaha* all types of sale and purchase may take place merely on the basis of give-and-take. More cautious *fuqaha* hold that only the customary business affairs may be carried out on the basis of give-and-take.

Verbal expression of agreement goes into two sorts: oral, which is the commoner use in day-to-day affairs. The other being giving approval in writing. While oral approval has always been in common use of the people and the Holy Prophet too exercised it, written approval of the sale and purchase transactions also finds mention in *hadith*.

The Islamic shariat has laid down no specific way of writing, neither restricts its approval to any specific type of pen and paper. At the advent of Islam the wooden pen was the only writing device and the things like bones and stones were in use in place of the paper. As the human technology progressed, the pen assumed many advanced sorts like computer and the

tikes. In future it many assume even more advanced shapes. In the days of your we had only human messengers to convey the message from one place to another. Now in the shape of the Internet, we have a very high-performance messenger capable to convey our message from east to the furthest west within seconds.

This prefatory note may be encapsulated as follows:

- As far as the *Ibadaat* are concerned, their aims and objectives and their way of doing both are definitely expressed by the Law-giver himself, and no omission from or addition to is acceptable.
- Sale and purchase falls under the category of the customary affairs. Permissibility is the original positions vis-à-vis this category as long as there arises no clash between it and the established norms of the *shariat*. For this category is meant to serve broader purposes of human beings. In short, the *shariat* has determined the objects of the customary affairs but not the way how to achieve them.
- Mutual agreement holds primary importance in affairs and business deals. Mutual consent may be expressed verbally, in writing, or by any other known way.
- Computer shares the ruling on the writing. The Internet, traditional telephone instruments, videophone are no more than the systems of conveying the message and communication from one to another.

In the light of these preliminary points the answers to the questions follow:

Defining *majlis* and determining its unity and difference

Majlis, from the root *juloos,* is applied to both the adverbials of place and or time. Generally, before arriving at the final conclusion, the parties sit together to discuss the pros and cons of the transaction. Hence the term *majlis*. Apart from the frequent use of *majlis* in the context of the contractual obligations, the term has occurred many times in connection with the *Ibadaat* as well. Being manifestly known to everyone else, the ancient *fuqaha* didn't bother themselves to define the *majlis* in specific words. The contemporary jurists, however, have tried to define it. Perhaps the most accurate and systematic definition of the term has been attempted by the authors of the *Mujallatul Akhkamil Adliah.* To quote it here:

> "The *majlis* (sitting) of a business transaction is the meeting of the parties to hold the business transactions." [2]

Dr. Wahba Zuhaili has defined *majlis* as follows:

> "*Majlis* of transaction is the state in which the transacting parties are while doing transaction. To use another expression, centering the speech (of the parties) round the transaction." [3]

Keeping the juristic restrictions in mind, Dr. Abdul Razzaq Sinhori has sought to define it in even clearer words:

> "The *majlis* of transaction is the place where the

transactors happen to exist. It begins from the time when the offer is made, and will continue till the transactors are busy with the transaction itself and there appears no sign from either party of turning from the topic." [4]

Taking into account the above mentioned three definitions we notice that Dr, Sinhori has defined the *majlis* in terms of the place of transaction. According to the Mujallatul Ahkam the meeting of the transacting parties is the essence of the *majlis*, but it too fails to explain whether the meeting of the transacting parties might be achieved if the place differed. Dr. Zuhaili's definition holds the *majlis* to be the state and conditions in which the parties are engaged in doing transaction, one making the offer and the other accepting it. Thus according to the last definition, *majlis* is the conditions of talking about the transaction rather than the unity of place of the transaction. This definition is more apt and reasonable as compared to former ones. The reasons follow:

(i) Throughout the Qur'an and *Hadith* we find nowhere that singleness of the place of offer and acceptance is the condition for the business dealings.

(ii) In transactions the mutual consent is of pivotal import, and the difference of the sittings makes little difference to the concept of mutual consent.

(iii) In the *Fiqhi* literature we come across some cases of the kind where the offer and consent have been acceptable to the *shariah*, the difference of place notwithstanding.

Admittedly, in the ancient *Fiqhi* literature we come

across the concept ot the singleness ot place ot otter and consent. However, so is largely because of that at those days it was quite unimaginable to think of other sorts of ensuring the time connectivity between the offer and consent than the one experienced. Therefore, it is just the statement of a contemporary communicational fact rather than of a condition.

Singleness and differentness of *majlis*

Primarily, the real connectivity is required between the offer and acceptance. Singleness of the place of offer and consent is required for no other purpose than the same one. As a matter of law, the offer has to be immediately followed by the expression of consent. Since it is extremely difficult to always maintain such immediate time connectivity between the two events, the *fuqaha* hold that the connectivity shall be regarded to be existing as long as there appeared nothing from the addressed party, within the same sitting, which might suggest his refusal of the offer. As far as the refusal is concerned, change of place or discontinuing the action which he was doing when the offer was made may be suggestive of it. "If the addressed party left the sitting of offer or busied himself in another thing suggestive of the difference of the earlier sitting before giving his consent to the offer, the sale transaction will not take place." (5)

Quite obviously, had the offer existed even after the lack of interest of the purchasing party, the offering party would have been required to wait for the reac-

tion of the addressed party indefinitely, divested of the right to make his offer to others.

The discussion above establishes it well that the unity of *majlis* means nothing but an unhindered connectivity between the offer and the consent. The required connectivity might be ensured by two things: first, unity of time of the offer and consent, second, the offer must not be followed by an act or movement suggestive of the purchasing party's lack of interest. For the unity of *majlis* the *fuqaha* hold that both the events of offer and consent must have time connectivity, which can't be ensured without the unity of time. If the *majlis* (of offer and consent) changed, the dealing will fail. For example, if one party made the offer but the second party left the *majlis* or shifted himself to another work, the offer shall cease to be valid, because it is the unity of time which ensures the connectivity between the two events." [6]

Moreover, we have *fiqhi* texts which clearly state that the unity of *majlis* means the unity of the event of offer and consent rather than of the *majlis* of the transactors. To quote here:

> "The unity of *majlis* is the presence of the transactors. That is, the event of offer and acceptance takes place in single sitting. It can be achieved with that the *majlis* of the offer and consent be the same with or without the unity of the *majlis* of the transactors. For the condition of connectivity is the unity of time of offer and consent. So, for the sake of ease for the sellers and purchasers, the *majlis* is held to be comprehensive of all the aspects involved." [7]

The author, Ibne Nujaim, might have said this in the context of the transaction by exchange of messages and writings, yet we can benefit from this principle in carrying out trade transactions through modern advanced systems of communication.

Furthermore, we find, across the *Fiqhi* literature, various items which are quite sufficient to conclude that the offer and consent connected invariably by time have been regarded as of the same *majlis,* the difference of places notwithstanding. Important things follow:

(a) "It is also a sort of the unity of *majlis* that the seller and purchaser are walking, on foot or a single conveyance. In such a condition if the offer is immediately followed by the consent, the deal shall take place. Likewise, the deal shall be held valid even if the second party gave him consent after walking one or two feet. In such a condition the second party's answer to the offer shall definitely take place on a place different from the one where the offer was made." [8]

(b) "A person present in the house said to the person present on the roof, "I sold that item to you for a certain sum", and the addressed person replied, "I purchased," the sale transaction shall take place. The only condition is that both the parties are seeing each other to eliminate the possibilities of ambiguity in the speech arising out from the remoteness." [9]

(c) "If a sale deal is contracted and a canal occurred

between the parties, the sale transaction shall take place." [10]

Having cited various instances of the kind, Ibne Nujaim states his own judgement as follows:

"Vis-à-vis such cases my opinion is that if the parties are so distantly located as to cause ambiguity in the exchange of speech between them, the sale transaction shall not take place, otherwise it shall be valid." [11]

To cut the long story short, for the unity of *majlis* what is required is the unity of time of the event of offer and consent, apart from that the parties happen to be present at the same place or differently and stand connected by any way.

Sale and purchase via the Internet

Sale and purchase through the Net may have two possible types: (i) The parties are available on the Net at the same time; one party offered and the other one accepted. If such being the actual condition, the transaction shall take place. This is as if the events of offer and consent take place in the same sitting, because the time is the same and the words of the offer and acceptance complete. (ii) The other possible type is that a party addressed the other one and made the offer, but the addressed party was not available on the Net to react immediately. He, however, received the offer as soon as he opened the Net. If the latter party expressed his consent immediately after going through the contents of the offer, the deal shall take place. The notable difference between the two sorts being that while in

the former type the event of consent follow the event of offer, eliminate all possibilities of withdrawal of the offer, the offer is not complete in the second type unless the addressed party opens the Net and goes through the offer. In this type the offering party has the right to withdraw his offer as long as he has not yet received the consent on the part of the addressed party. Discussing the sale and purchase by way of writing, the jurist Kasaani has written as follows:

> "As far as the sale and purchase by way of writing is concerned, it is that a person writes to another one as: "I sold my that item to you for the sum so and so." On receipt of the message, the other party said in the same *majlis* "I purchased it." As a matter of rule, the addressing of the non-present party is his letter of offer. It is as if he attended the *majlis* by himself and made the offer and the other party consented to the offer. And if he wrote only a part of the deal and then withdrew his offer, the withdrawal shall be considered rightful as the writing is not above making the offer face to face. In the case of addressing, too, the offering party may withdraw his offer till the purchasing party expresses his acceptance. So, in the event of the deal by writing, first party's right of withdrawal is even more obvious."[12]

From among the scholars of the present age Dr. Wahba Zuhaili holds valid the offer made by the telephone or a similar system of communication. To quote his words:

> "The same rule will be applicable when the offer is made through telephone or similar other sys-

tems."[13]

Nikaah via the Internet

Compared to all other mutual dealings, the marriage is far too important and delicate. While permissibility is the original point in all other things, as established by the juristic principle, *"permissibility is the original rule in all things,"* in human modesty, contrariwise, the original point is the unlawfulness. It is for this reason that the proposal and consent of marriage must be interlinked with each other and should essentially take place in presence of the witnesses. As far as the provision of the witnesses is concerned, it is based on the following saying of the Prophet (SAWS):

> "It is reported by H. Ayisha that the Holy Messenger of Allah said. No *nikah* can validly take place without the guardian and two just witnesses. Any *nikah* taking place in violation to this condition shall be null and void. In case there occurred a dispute, the sultan (supreme authority of the Muslim State) is the guardian of every one without a guardian." [14]

The above quoted *hadith*, although singly transmitted, offers a certain ground for the principle because of the fact that the jurisprudents, without a single exception, stand agreed on the condition of the witness. [15, 16] The witness or testifier is so termed because he attends the *majlis-e-nikah* in person, hears the proposal and the consent. He may be called to bear testimony, to what he saw and heard, if there arises a need to it. "The *nikah* will not take place unless each party is able to hear the words of each other and the two witnesses hear their offer and consent concurrently." [17]

More preferably, the witnesses should have intact eyesight as to some *Fuqaha* a blind person is fully unfit to play the role of witness of *nikah*. (For more detail, refer to al-Fiqhul Islami wa Adillatuhu, 7/76)

Moreover, the *nikah* proposal and consent via Internet is prone to ambiguity, even to deception. Possibly, the *nikah* proposal and consent may be carried out by other persons than the original contractors and the witnesses, unaware of deception, might bear witness in favor of the deceiving persons. Much as such apprehensions can't be ruled out in the case of financial dealings via the Net, yet the profound difference between a financial deal *nikah* is too obvious. Further, in the e-mode of business the seller sends the merchandise through the company and then price is deducted from the bank account of the purchaser and is transferred to the credit of the seller. This process lessens the possibilities of such fraud. In case any party committed fraud even after such measures, the loss may easily be offset. So, the *nikah* proposal and consent via the Net directly is not valid. Still, by Internet the *nikah* might be contracted in lines with the writing mode of *nikah*. The party may appoint somebody his/her attorney via the Net, and the attorney may contract the *nikah* of his client. Or the attorney may write the message of *nikah* of the party on the Net and second party read out it before the witnesses and then express the consent on his/her behalf. In this mode of *nikah* both the proposal, made by proxy or by message, and the direct consent take place in presence of the witnesses and the

nikah shall take place, as the *fuqaha* have said regarding the marriage by writing or by messaging.

> "If the man sent a messenger to the woman or sent writing to her (in connection to *nikah*) and she expressed her consent to the proposal in presence of such two witnesses who had heard the message brought by the messenger or the writing, the *nikah* will take place because the unity of *majlis* of proposal and consent is obtained, even if impliedly. For the messenger conveys only the words of the sender. Likewise, the writing also substitutes for the address and direct talk. Thus, listening to the words of the envoy and reading of the writing actually amounts to listening to the words of the sender or the writer, even though the parties do not listen to each other physically."[18]

This way the condition that both the proposal and consent be heard by the witnesses is fulfilled. 19 This is according to the Hanafi standpoint. So far as the other three schools of Islamic *Fiqh* are concerned, they have specified that *nikah* by writing can't take place. For writing is just an allusion to them, whereas the *nikah* can be contracted only by unambiguous verbal expression. So, according to the Shafai, Maliki and Hambali standpoint there is no question to contract the *nikah* by writing, let alone the Internet. To quote an authority here:

> "The Malikites, Shafaites and the Hambalites hold that the *nikah* shall not take place by way of writing, apart from that the parties are present or absent."[20]

Obtainment of transacting parties' secret information by a third person

If the parties of a sale and purchase deal employ a secret code to execute their deal, this obviously means that they want to maintain secrecy, and everybody has the right to keep his affairs out of other people's eyes. No third party is allowed to infringe upon their secrecy. The Holy Prophet (SAWS) has proscribed it that one peeps out into the houses of other people. He even said that if the violator of this rule suffered an injury at the hand of the house inmates, the latter shall owe no reparation. It is reported by H. Abu Hurairah that the Prophet (SAWS) said:

> "If one tried to peep at other people's houses without their permission, they have the right to knock out his eye." [21]

Based on this, it shall of course be an act of breach of trust to try to obtain the secrets of other people's business deals by tracing out their secret codes.

(a) Sale and Purchase by videoconference

If the business deals could be carried out by the Internet, as discussed above, the business by videoconferencing shall be even more obviously permissible. Videoconferencing is safer as compared to the Internet to have the possibilities of ambiguity and dissemblance. Nevertheless, the act of videography itself is subject to juristical differences of the *ulama*.

(b) Sale and Purchase by telephone

Since the business deals are permitted to be carried out by writing, as expressed by Shami, [22] the use of telephone shall be permissible to execute the business deals, as long as the deal involves no act of fraud or deceiving.

Nikah by telephone

The prerequisite of *Shahadat* in marriage (witnessing) consists of two equally important parts: (1) hearing of the witnesses the expression of proposing and consenting, (2) being of the proposing and consenting parties in the face of the witnesses. Besides the conditions that the witnesses must hear the expression of proposal and consent, another equally important provision is that the witnesses see the parties in person, as explained by the following text:

> "... it is pre-requisitely required that two free and adult witnesses attend the marrying parties, hearing their expressions of proposal and consent." [23]

The same view is shared by other jurisprudents beside the Hanafis.

Therefore, since the expression of the proposal and consent of marriage over the telephone is bound to miss the other part of the condition, the *nikah* will not take place; even if the telephone instrument facilitates the full hearability of the proposal and consent to the witnesses. *Nikah* over the phone could only be contracted by appointing somebody as attorney. The boy may appoint the girl his attorney and, likewise, the girl

may appoint the boy as her attorney to contract the marriage on behalf of his/her counterpart. The boy as well as the girl has the right to appoint a third person as their attorney to contract the marriage with so and so on behalf of his/her client. It has to be noticed that the appointment of the attorney will turn a necessity if the marrying boy and girl are not capable of contracting their marriage by themselves. Anyway, the attorney shall have to express before the witnesses, "I have been appointed the attorney on behalf of that boy or girl to contract my marriage with him/her. So I am doing this." Or, "so-and-so person has appointed me his/her attorney to marry him/her with so and so boy or girl. So, I marry him/her with so and so person." The marrying boy or girl will have to express his/her consent to this proposal in presence of two witnesses. The witnesses must be acquainted with the non-present marrying party. In case there is no former acquaintance between the witnesses and the non-present marrying party, the name of his father too shall have to be mentioned in order to establish his identity beyond doubt. As for mentioning the name of the non-present marrying party's grandfather, in most cases it is not necessary except that the determining of the non-present bride's or groom's identity depends on so, doing. To quote an authority:

> "If a woman makes somebody her attorney to marry herself with him and the attorney said to the audience: "Be witness that I married with the so-and-so woman", the *nikah* will not take place if there existed no former acquaintance between the

woman and the witnesses. The *nikah* will take place only when the required identity and parentage of the woman is mentioned." 25

Summary of the discussion:

1. (*a*) *Majlis* describes the state in which the parties are practically engaged in striking a deal.
   (b) The unity of *majlis* means the interlinking of the offer and approval. The differentness of *majlis,* on the contrary, is applied to the situation when this interlinking is missing.
2. So far as the business deals by Internet is concerned, it has two possible modes. If the parties are facing each other on each end, to make proposal and approval of the deal, the deal shall be regarded concluded forthwith. This mode is of dealing face-to-face. If, on the other hand, the other party is not available on the other side at the Net to react, and is able only to read the message later, this mode is of concluding the deal by writing and the respective *fiqhi* rules shall be applied to it.
3. The proposal and consent of marriage made on the Internet are not valid. The parties, however, are permitted to appoint one another each other's attorney, thereby to contract the *nikah.* The non-present parties may appoint a third person as their attorney to conclude the marriage contract.
4. It shall not be permissible for a third party to secretly access to the details of a business deal con-

cluded by Internet and in which the parties did maintain secrecy.

5. Sale and purchase deals might be concluded by videoconferencing.
6. The sale and purchase could be validly concluded by making written offer and approval.

(The author is a well-known *alim* of India and a jurist of note.)

Notes and References

1. The Holy Qur'an S.4, A 29
2. Mujallatul Ahkamil Adlia (concerned term): 181 p. 38
3. al-Fiqhul Islami wa Adillatuhu 4/106
4. Masadirul Haq fil Fiqhil Islami 2/6
5. Badaius Sanai 4/324
6. Raddul Muhtaar 4/69
7. al-Bahrul Raiq 3/83
8. Fathul Qadir, 5/461, Badius Sanai 4/325, Khulasatul Fatawa 3/15, Hindia 3/17, al-Bahrul Raiq 5/272
9. al-Bahrur Raiq 5/456
10. Op cit.
11. loc. cit.
12. Badaius Sanai 4/326
13. al-Fiqhul Islami wa Adillatuhu 4/321
14. Nasbur Raya li Ahadisil Hidaya 3/167 chap. Nikah
15. According to the majority of the Jurists the proposal and consent of marriage must be attended by the witnesses. To the Malikites, however, the witness may be made before the consummation of marriage. (For further detail, refer to al-Sharhul Saghir 2/335 and after.)
16. al-Fiqhul Islami wa Adillatuhu 7/70, 71
17. Qazi Khan on the footnote of the Hindia 1/332
18. Badaius Sanai 2/491, also Tatar Khania 3/75 Fathul Qadir 3/109, Hindia 1/369, Raddul Mukhtar 2/26
19. Raddul Muhtar 4/73, Hidayah 2/286
20. al-Fiqhul Islami wa Adillatuhu 7/46
21. Muslim 2/212 Chap. Tahreemun Nazar fi Baiti Ghairihi
22. Raddul Muhtar 7/26
23. al-Durrul Mukhtar with Raddul Muhtar 4/87
24. al-Majmu, Sharhul Muhazzab 17/36, al-Mughni 7/34
25. Khulasatul Fatawa 2/15

Trade Transactions and Modern systems of communications

By Ml. Atiq Ahmad of Basti

Before discussing the questions raised about conducting the trade transactions and financial deals through modern systems of communication it is important to note that, unlike the family law (*nikah*, divorce, distribution of the estate and property of the deceased etc.), whose both principles and the ensuing details have been dealt with in the Qur'an and *Sunnah* in comparatively greater detail, concerning the trade and financial affairs the Qur'an and *Sunnah* have limited themselves only to laying down the general principles and broad outlines, leaving the ensuing details to the established customs and usages. We can hardly find any detail (excepting usury and the *bai-e-sarf)* in the sources of the Islamic law. We have been provided with important principles instead. In line with those principles we are asked to shape our business affairs and financial dealings, keeping in mind the requirements of the age. Ibne Qudama Hambali writes:

> "Sale and purchase is of two types: one is carried out by offer and consent. The other one is done by give-and-take. For example, a person asks the other. "Give me a bread for this *dinar*," and he gave him the bread according to his choice. Or, to take another example, the seller said to the purchaser,

"Take this garment for one *dinar*" and he took it, this sale and purchase shall be right, as Imam Ahmad has explicitly said. Imam Malik too subscribes to the same view. To quotes his own words: "The sale shall take place according to the way regarded to be sale by the people." Some Hanafites hold that such way of sale and purchase may be adopted only in trifling things. The same has been reported from Qazi Khan who says that by give-and-take the sale may take place only in things of little value rather than of great and costly ones. Imam Shafai holds that no sale and purchase can take place without explicit offer and acceptance. Some Shafites too subscribe to what we (the Hanafites) hold.

Our argument is that Allah *Ta'ala* has declared the trade to be lawful but did not express the ways here to conduct it. So, quite obviously, there is no options to know it other than making recourse to the general usage in vogue among people as is the case with the transfer of possession of the purchased item, its getting and detaching from the first owner. The same being the practice of the Muslim in their markets of sale and purchase. It is more because of the fact the act of offering and consorting is intended only to be an expression of the parties' willingness. So, if we had other signs of this willingness, like bargaining, and defrayal of price and taking possession of the purchased item, they also shall be regarded to be representative of offering and consenting, sufficient for the purpose. It is because of that the affairs of selling and purchasing

have no aspect of worship."[1]

There are two very important principles which have to be observed in all trade transactions and financial dealings.

First, mutual consent of the parties. This principle is based on the following *ayats* of Qur'an:

> "O those who believe! eat not up your property among yourselves in vanities: but let there be amongst you traffic and trade by mutual consent." [2]

> "And give the women (on marriage) their dower as an obligation, but if they, of their own good pleasure, remit any part of it to you, take it and enjoy it with right good cheer."[3]

The Holy Prophet (SAWS) is reported to have said:

> "It is never a lawful act for a Muslim to eat up from the wealth of his brother except out of his will."

It is the condition of the mutual consent vis-à-vis financial dealings due to which the *Shariah* outlawed all such sorts of financial dealings which fail to represent the mutual consent of the parties in the fuller meaning of the term, like *Baie Munabaza, Baie Mulamasa, Bai ilqa, al-hajr* etc, to name a few. But despite the primary importance of the mutual consent, the *Shariat* has not bothered itself to give a particular definition of it; it left it completely to be determined according to the generally established usage of the people.

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[1] al-Mughni 6/7,8,9

[2] al_Qur'an 4:29

[3] al-Qur'an 4:4

The second important principle of the Islamic law of buying and selling is the transparency. Fraud, deception, misinformation etc. are declared outlawed by the *Shari'a*. Concealment of facts of the object of sale feared to lead to dispute between the parties has been held to be invalidator of the deal.

In short, concerning the financial matters and the trade affairs, the Islamic *shari'at* has kept itself limited only to laying down fundamental principles and broad outlines, leaving the application of those principles to the men of Islamic learning and the *Fuqaha* of every age.

So far as the *majlis* of transaction and its unity is concerned, a study of the *Fiqhi* writings on the subject reveals that by the unity of *majlis* what is primarily required is the connectivity between the events of offering and consenting, because it is the connectivity between the events of offer and consent which brings the transaction into being; and is regarded a sign of the parties' mutual consent. In the past the unity of *majlis* was the only thing to ensure the connectivity between the offer and consent and the *fuqaha* justifiably associated extraordinary import to the concept of the sitting of transaction and its unity vis-à-vis the events of offer and consent. However, it does not mean that no transactions can take place unless the unity of *majlis* is physically realized. Had it been so, there would have been no room for concluding a transaction except the parties stand face to face. The majority of the *Fuqaha* holds that financial dealings and business transactions

may as much validly take place between two non-present parties as between those attending the sitting of offer and consent. The topic has been dealt with in much greater detail in the *Fiqhi* literature. In the past the sale and purchase would take place through writing or the exchange of messages between the selling and purchasing parties. Both these sorts of connectivity have been discussed desirably in the literature and the connectivity between offer and consent of the non-present parties has been admitted on a par with the kind of dealing between the parties sitting face to face in the same *majlis*. The detail follows:

The concept of the *majlis* of transaction is quite clear if both the transactors are available in the *majlis* of transaction. It, however, assumes complexity when the buyer and purchaser happen to be at different places. The question we face is how to bring about connectivity between the events of offering and consenting. Obviously, there exists no possibility of an actual unity of *majlis*, only a supposed unity is possible.

The statements of the *Fuqaha* are suggestive of that in case the dealing between two non-present parties, when the offer, whether it is in writing or by a messenger, is received by the second party, the place and sitting of receiving of offer shall be regarded to be the sitting of transaction, and he shall be required to give his consent (if he wishes so) to the offer in the same *majlis*.

Allama Marghinani (the author of Hidaya) writes:

"Writing is like the face-to-face communication.

Sending messenger is also similar to them so much as the place of receiving the writing or message has been regarded to be the majlis."[1]

Kasaani, another celebrated Hanafi jurisprudent, has expressed the way of concluding the sale and purchase transactions, as follows:

"The wording of the writing should be like that," I sold my so and so servant to you for the sum so and so. On receiving the writing if he, in the same *majlis,* said, "I bought", the transaction shall take place. It is because of that the communication of the non-present transactor is by way of writing. It is as if he attended the *majlis* by himself and communicated the offer directly to the purchaser; and the latter accepted the offer during the same *majlis.*"[2]

Ibne Hammam has explained the point as:

"When the letter approached him, understood its contents and expressed his approval in the same *majlis,* the sale transactions will take place." [3]

The Malikite and Hambalite jurisprudents too share the same view vis-à-vis the financial transactions. The only difference is that the Malikite hold that he must communicate his consent to the offering party immediately after he happened to receive the offer in writing.

Allama Bahuti writes:

"If the buyer is not present in the *majlis* and the seller wrote or sent message to him in this regard

[1] Hidaya with Fathul Qadeer, 5/461

[2] Badaius Sanai 5/138.

[3] Fathul Qadir 5/462

expressing therein that he had sold his so-and-so house for so-and-so amount and on receiving the writing or message the purchaser gave his consent to the offer, the transactions shall come into being."[1]

As for the Shafai standpoint, there are two views. First, no sale or financial transaction can take place by writing if the parties are able to speak.

The other view is opposed to the first one; and according to it all financial and sale transaction might be concluded by written communication of offer and consent to each other. While Abu Ishaq Shirazi has given preference to the first view, Imam Nawawi subscribes to the latter one. Following are their statements of their positions.

"If one person wrote to another regarding the sale of an item of his, there are two standpoints: in this regard first, that the sale transaction will take place as the situation demands it. The other viewpoint is that no transaction can take place by writing as long as he is able to speak."[2]

Contrary to it, Imam Nawawi writes:

"It is more proper that the sale transaction and similar dealings will take place by writing because the condition of mutual agreement is fulfilled. Imam Ghazali in his *Fatawa* and Rafai in Kitabul Talaaq accord preferential soundness to the sale and purchase transaction and similar dealings by written communication. Our jurisprudents have

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[1] Kashful Qana 3/148.

[2] al-Muhazzab 1/257

> said: "If we regard it to be right, the condition is that the addressed party must accept it immediately after he comes to know about the writing. This is more proper."[1]

In short, according to the Hanafi, Maliki and Hambali viewpoint, if the transactors happen to be at different places and the first party communicated his offer in writing and the addressed party gave his consent at the same sitting where he received the offer, the transaction shall validly take place, apart from that his consent is oral or in writing. The Shafites, however, add that the consent must take place immediately after he happened to receive the offer. Any delay between the offer and consent is bound to negate the required connectivity between the two events. Hence no transaction will take place.

This detail being about financial transactions. So far as the *Nikah* is concerned, it profoundly differs from the financial deals. Since it obviously holds more significance and sacredness than all other types of financial and social contracts, the *Shariat* has prescribed more conditions and rules for it. For example, the offer and consent of *Nikah* must be witnessed by two persons. This is a condition which is not shared by any other contract. Given the extraordinary importance of the marriage, the *fuqaha* have adopted a comparatively uncompromising position vis-à-vis the *nikah* by writing between the non-present man and woman.

Following are the viewpoints of different schools of

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[1] al-Majmu 9/167

Islamic jurisprudence:

> "The Malikites say that the *nikah* can't take place by writing. That is to say, if the marriage proposal and consent is taking place by the exchange of writing between the marrying parties, the marriage shall not take place. "Symbolism or the writing the offer and proposal is not sufficient except in the case that one or both the marrying parties are speech-impaired." 1

The preferred view of the Shafaites does not permit the holding of marriage by way of writing. Many Shafai jurisprudent, hold otherwise. To them the proposal and consent of marriage can lawfully take place and the marriage thus concluded is fully valid. Explaining the latter Shafai view, Imam Nawawi writes:

> "The writing by which the marriage can take place should have the contents like that: "I gave my daughter in your marriage." And the writing should be witnessed by two just persons. It is not necessary that the proposer should visit the witnesses; they may also visit him. When the writing reaches the marrying man, he should express his consent verbally or in writing, and this event too has to be witnessed by the same two just witnesses. In case the consent is attended by two witnesses other than those who had witnessed the proposal, there are two opinions. According to the more accurate one, the *nikah* will not take place because his consent is not witnessed by the witnesses of the proposer. The other less preferred opinion says that

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[1] al-Sharhus Saghir with Bulghatus Saliki 2/17.

the marriage will come into being because both the proposal and consent have, after all, been witnessed by two witnesses."[2]

- So far as the Hanafi and the Hambali schools of jurisprudence are concerned, according to the essence of the detail available, the *nikah* by writing between two non-present persons shall take place. The Hanafis have discussed the issue in a rather detailed way. As for the written proposal and consent between the present parties, it is not permissible even in the sale and purchase deals, let alone the *nikah*. As regards the proposal and consent of marriage between the two non-present parties, the *nikah* will not take place if both the acts of proposing and consenting take place in writing; the consent must be expressed verbally. With reference to jurist Ibne Hammam, jurist Shami has given the following detail:

"The procedure of it is that man should write to woman. On receiving the written marriage proposal from the man, the woman should call for two witnesses and read out the written proposal before them and express her consent to the proposal, again, before them. Or say "The person so and so has proposed marriage, and I call you to witness that I married myself with him." In case she avoided mentioning the name and proposal of the proposer and said only that she married herself with him, the *nikah* will not take place. Both the proposal and consent have to be mentioned before

[2] al-Ashbah wal-Nazair p. 334.

the witnesses. Reading out the written proposal of the man before the witnesses or expression thereof by the woman will facilitate the hearing of both the proposal and consent. If not so, how the witnesses will be able to hear the proposal and consent." [1]

It is worthwhile to note that according to the Hanafi viewpoint, the act of dispatch of the written marriage proposal needs not be attended by two witnesses. Indeed it is the expression of the consent by the other party which has to be attended by the two witnesses. Similarly, the unity of the *majlis* of proposal and consent too is not required as being the case of the financial deals. The addressed marrying party is at liberty either to express the consent in the same sitting where he/she happened to receive the proposal, or later in subsequent sitting. The addressed party will just need to read out the written proposal and express the consent in presence of two witnesses.

The above given detail about the financial and social deals and contracts between two non-present parties is intended to tell that the juridical principles don't always require that both the transactors invariably attend the sitting, where and when the transaction is being carried out. The *fuqaha* took into account all other ways of establishing the interlinking between the offer and acceptance, or proposal and consent available during their ages.

The long discussion of different points and aspects of the theme has established beyond doubt that what is

[1] Raddul Muhtar 3/12, 13.

actually required is the interlinking ol the otter and proposal with the acceptance and consent rather than the physical togetherness of the transacting or marrying parties.

Today the extraordinary expansion of the trade and ever-increasing business needs call for to give more importance and prominence to interlinking of the offer and consent, taking into account all the models of it made available by the scientific and technological advancement rather than insisting on the traditional concept of the unity of *majlis*.

It is also notable that the modern communication system: telephone, fax, telex, Internet etc. are not new in so far as the expression of the offer and acceptance is concerned. They are not more than the means of communication. While in the past the only way of interlinking between the words of the two talking people was that they sit face to face, being located on one place or two different ones but within the shouting range, the modern advanced communicational systems have made it possible for two persons to communicate with each other despite being physically present in two places with thousands of miles of distance between the two. Today an Indian businessman, for example, is able to contract a deal of millions of rupees with an American businessman without stepping out of his house. It is because of the fact that the modern communicational systems facilitate for them to easily communicate with each other with immediate interlinking between the offer and acceptance in spite of the

thousands ot miles ot distance between the two.

Offer and acceptance by fax in fact is the mode of business by writing and the rules and details of the writing mode of business shall be applicable to doing business by fax. But by the Internet both the oral and written modes of interlinking are possible. Even the transactors are able to see each other and express their immediate reactions to the offer and acceptance.

Ans. to the question 2

From the *Shariat* point of view any business deal contracted by the Internet will take place. To explain the point, if one party made the sale or purchase offer by Internet and the other party expressed his approval immediately after receiving the offer, the deal shall lawfully take place.

Ans. to question 4

If a business party wants to keep his dealing secret, it shall be utterly wrong for anyone else to stealthily enter into the details of the deal without securing express permission from the parties concerned.

By videoconferencing the sale and purchase and similar other deals might be contracted, because here both the parties not just hear the words of each other fully but also are able to see each other. The videoconferencing facilitates the real interlinking of the proposal with the approval.

Ans. to question 6

Sale and purchase deal might be contracted by telephone provided the contracting parties are able to recognizing the voices of each other's.

Ans. to question 3

As far as the *nikah* by Internet is concerned, it will not be concluded if the proposal and approval are in writing, even if the act of writing is attended by two witnesses each side. The only acceptable mode of *nikah* over the Internet is that the written proposal should be read out by the addressed party before the witnesses and then express his/her approval again in their presence.

Ans. to question 7

The proposal and approval of *nikah* on the telephone may take place in the way that both the acts or at least the approval, be heard by witnesses present with each party. The witnesses must be recognizing the voices of both the marrying parties.

But, in view of the extraordinary importance of *nikah* and the subtlety of its mechanism, it is better advised not to contract it by telephone or other similar communicational systems. The nature of *nikah* is entirely different from recurring business deals. In case it is difficult for the parties to get together due to any reason, the better course of action for them would be to appoint their attorneys at each other's city for the purpose. The appointment of an attorney might be by

writing, by phone, fax, Internet etc.

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Sale and purchase deals and marriage contracts by Internet and other modern systems of communication

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Introductory note

Sale and purchase deals constitute an inseparable part of the human life, and it is almost impossible for human being to live without involving in selling and buying. It is for this natural reason that many *ahadith* of the Holy Prophet (SAWS) seek to lay down directive principles of selling and buying with its different sorts and modes, coupled with important details. Following the same line, the Islamic jurisprudence has offered an elaborate code of business deals giving necessary detail about the permissible and impermissible modes of trade activities. All these rules have to be observed while entering into business contract with some body. From among the most fundamental principles of business transactions are the *offer* and *acceptance*. That is, one party makes the offer to sell his/her item and the other party accepts this offer. For the offer and acceptance what is essentially required is that both the acts must take place in single sitting. In other words, the deal will not take place if the approval is made after quite a while or the approving party moved away from the *majlis* for some time or engaged himself in

any other work suggesting his/her indifference or disapproval towards the deal. The condition of the unity of *majlis* was intended to save the offering party from undue trouble. Obviously, the unity of *majlis* or, to be more precise, the interlinking of the offer with approval was conceivable only with the unity of place. Hence the conditions of the unity of place for making the offer and the approval. Again, the unity of the place is not an aim in itself; it is the interlinking of the offer with approval which is actually required. Following are some substentiative juridical statements.

> "The conclusion of the deal means the interlinking of the words of one dealer to those of the other."[1]
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> "If the approval was made after that the approving party walked one or two steps, the deal will take place. Obviously, if both the parties are making the offer and acceptance while walking closely together, the acceptance will take place only in place undoubtedly different from the one where the offer was made. It is also said that the deal between the walking parties is valid unless they don't differ from each other by theirselves."2
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> "If the parties are striking the deal and between them occurs (for example) the Mazdhasai river, the deal will take place even if there occurs a big river in which run the boats. The author (may Allah be pleased with him) said: "I have arrived to the opinion that in such cases if the distance between the dealing parties is so vast as to cause ambiguity be-

[1] al-Jauhatun Nayyirah vol. 1 p. 225.
[2] Fathul Qadir 5/461.

tween their exchange of words, the dealing shall not be right. Otherwise, there is no problem. The same rule is applicable to a covering lying between them. If it does not cause an obstacle to understanding or hearing the words of each other, it shall not be regarded an impediment to the conclusion of the deal."[1]

"If the parties did not separate but made between them a hindrance of covering etc, or dug a canal between them, the separation will not be obtained at all. But in case there occurred a wall between them, there are two opinions. The more correct is that the separation between the parties will not be obtained, as is the case with the presence of a covering, because they did not separate. The same ruling is applicable to the case if two differently located parties make offer and approval by calling out each other from a hearing distance and their sale deal will be valid. This is unanimously agreed point amongst the *fuqaha*."[2]

The preceding statements of the *fuqaha* establish it beyond doubt that what is invariably required for the proper conclusion of a sale deal is the interlinking of the offer with the approval. So far as the unity of place for both the acts is concerned, it was just meant to realize the required interlinking, as it was quite unthinkable in the past without the locational unity of both the offering and accepting parties. But, unlike the past, now the situation stands drastically changed. Thanks

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[1] al-Bahrur Raiq 5/272.

[2] al-Majmu, Sharhul Muhazzab 9/171, al-Mughni 4/8.

to the unprecedented advancement ot the communicational systems, today we are able to strike the business deals with other far-distantly located party without facing any problem of the type of the communicational gap. And the unity of place is no longer a provision for the realization of the interlinking between the offer and approval. The unity of place of the contracting parties, therefore, can't be taken as a permanent provision for the conclusion of the deal. Moreover, two persons may strike a sale deal by way of correspondence and this way the sale deal may take place between them despite their locational difference. Precisely speaking, the unity of *majlis* means the unity of time during which the parties are engaged in contracting the deal. Or, to put it differently, the *majlis-e- aqd* is the state when the deal related talk is taking place between the contracting parties. So, if the talk is taking place by phone, the sitting of contracting shall be the time in which the parties are communicating to each other regarding the deal. This sitting will continue until they divert the subject of their talk. If the business related communication (written or oral) is being carried out by fax or Internet, the *majlis-e-aqd* shall be considered the time when the message is received, and if the approval is expressed in the same *majlis*, the deal will take place, provided that there was no gesture on the part of the approving party after receiving the offer which might mean his withdrawal from concluding the deal. It must be noted that no business deal could be struck even by the use of the modern communicational systems

unless all other conditions are properly met by the contracting parties.

After this long prefatory note, answers to the questions are as follows:

1. Unity of *majlis* means the interlinking of the time of offer with that of the pronouncement of approval, irrespective of that the contracting parties are present in the *majlis* or not. The following citation substantiates this observation:

"Unity of *majlis* is applied to the state where and when the contracting parties are present. That is the making of offer and the pronouncement of approval take place during the single sitting, thereby interlinking the offer with approval. Unity of *majlis* does not always mean the unity of place of the contracting parties. For the condition of he interlinking between the events of offer and acceptance is the unity of time. Hence the *majlis* is made inclusive of all sides of the contract, thus to make the concluding of the deal easy for the parties."[1]

2. A sale deal may be contracted via Internet, as is the case with the exchange of correspondence. The Internet is even safer system than the correspondence to contract a business deal.
3. According to the majority of the *fuqaha* the witnesses must hear both the events of proposing and approving, and this constitutes a precondition for the concluding of the marriage contract.

"The *nikah* will not be contracted unless both the proposing and approving parties hear the words of

[1] Al-Bahrur Raiq 3/83, al-Mausuatul Fiqhiya.

each other and their words are heard by two witnesses at the same time."[1]

4. This establishes that it would not be just enough that the witnesses see the offer and approval in the written form. The only way is that on receiving the written proposal the party read out it to the witnesses and then pronounce his/her approval again before them and then write the same to the first party. In fact this mode of *nikah* is much the same as the *nikah* by writing.
5. Once a sale deal is complete between the parties via the Internet, a third person may use the details of their deal for his own business benefits.
6. Sale as well as other deals might be contracted by videoconferencing. Even the videoconferencing is far less prone to doubts and misapprehensions than most other communicational systems, hence preferable. It is almost much the same as doing business sitting face-to-face.
7. As the sale deals may be contracted by the exchange of correspondence, so must be the case of oral exchange of words of the telephone. Both the oral and written modes of contracting business deals are mentioned in detail in all the notable *fiqhi* texts. Telephone is very much like the correspondence. Therefore, it is quite lawful to concluded the business deals over the telephone.
8. On telephone the *nikah* can't be contracted. It is

[1] Qazi Khan (on the footnote of the al-Hidaya 1/232, al-Majmu Sharhul Muhazzab 17/360, al-Mughni 7/341)

because ot the tact that even though the proposing and approving parties are considered united in *majlis*, yet without the presence of the witnesses, and it is an established fact that the words of the proposal and approval of marriage must be heard by the witnesses. Missing this condition, the *nikah* will not take place.

"For *nikah* it constitutes a precondition that the proposal as well as approval must be attended and the words of the parties be heard by the two free, adult witnesses simultaneously."[1]

An attorney for marriage may, however, be appointed. This too may have two modes. One is that each party may appoint his/her counterpart to be his/her attorney who then make proposal and express approval on his/her counterpart's behalf in presence of two witnesses. In this mode the witnesses must have an acquaintance with the parties. In case there existed no such an acquaintance, the attorney shall be required to mention the names of the clients with their parentage.[2]

The other mode is that one party appoints somebody else his/her attorney and this attorney pronounce approval on behalf of his client in presence of two witnesses. This way too the *nikah* will be contracted.

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[1] al-Durul Mukhtar with al-Raddil Muhtar 4/47, al-Majmu 17/360, al-Mughni 7/341.

[2] Khulasatul Fatawa 2/15.

Concluding sale deals and marriage by Internet, other systems of communication

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The conclusion of all such dealing and transactions which involve the financial defrayal are subject to a mutual consent. As the *fuqaha* have put it unanimously, the *ijabb* and *qubool* constitute a prerequisite for the sale deals and other social contracts. As far as the *ijaab* is concerned, it means making the offer of the business deal or *nikah*. As regards the *qubool*, it means the approving of the offer or proposal. Both *ijaab* and *qubool* are invariably required to be interlinked with each other. Letting the matter of interlinking loose would have amounted to placing the contracting parties into problem. Hence the interlinking of the *ijaab* and *qubool* a condition for the validity of the deal, as stated by the *fuqaha*. Interlinking is of two types: actual, it applies to the situation when the offer is immediately followed by approval. The other one is implied. It means that both the offer and approval take place during the same *majlis* but the approval follows the offer slightly later. Perhaps that is why the unity of place of offer and approval too was held a part of this condition. A study of the related texts of the Four Great Schools of Islamic jurisprudence makes it almost clear that the unity of place of offer and approval was held a

condition to ensure the interlinking ot the otter with the approval which was otherwise unconceivable in the past. However, today the things stand changed altogether; an overall unprecedented scientific advancement has brought an unimaginable revolution to the communicational systems, which has virtually brought even the longer distances to naught and whole the world has turned into a global village. Now we face the question if the condition of the unity of place is still as much relevant to present changed times as it was in the past, for, despite the communicational advancement, the place distance is still a factor to be addressed.

Unity and difference of *majlis*: what does it means?

Majlis stands for the time period during which a deal is concluded between the contracting parties; and the unity or difference of *majlis* is applied to the continuance or change of the time period during which the business deal is concluded. Thus the unity of *majlis* is nothing but the interlinking of the time of offer with that of approval. Substentiative statements follow:

> "If the *majlis* is changed, the deal will not be concluded. In case one party made the offer and the other party stood up from the place or engaged himself in any other act, the offer will remain no longer valid because the condition of interlinking is the unity of the time period."[1]

[1] Raddul Muhtar 4/69.

Dr. Wahba Zuhaili has put it in even more elaborate words:

> "Unity of *majlis* does not necessarily mean being of the contracting parties located on a single place, as sometimes one party might be available on a place different from the locational site of the other and still both and interlinked with each other by a connectivity system. The unity of *majlis* means the unity of the period of time during which the contracting parties are busy with concluding the deal. Thus the sitting of contract stands for the state in which the contracting parities are negotiating the deal. About the same state the *fuqaha* have observed: "The *majlis* brings the diverse together."[1]

These statements of the *Fuqaha* make it clear that the unity of *majlis* in fact is the unity of time and the interlinking of the offer with the consent and approval. So far as the locational unity of the parties is concerned it carries little significance in itself; it is just to ensure the interlinking between the offer and approval. If the required interlinking is ensured by a means of communication or by any other way, the parties may dispense with their locational unity. "If the party expressed his approval after stepping one or two strides, the deal will be concluded."[2]

Following observation of the Fathul Qadir's author is of note:

> "Undoubtedly, if the contracting parties are negotiating the deal while walking, that of approval will

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[1] al-Fiqhul Islamic wa Adillatuhu 4/461.
[2] Fathul Qadir 5/461.

essentially differ from the place of the proposal." [1]

Obviously, the lawful contracting of the deal while walking is demonstrative of that the unity of place is not essential for the interlinking of the proposal with the approval.

To cut the long argumentation short, the meaning of the unity of *majlis* is nothing but the unity of time period during which the parties negotiate a deal. The differentness of the *majlis*, on the other hand, is applied to the change and difference of the time in which the dealing is contracted.

Sale and purchase through the Internet

Sale and purchase too of course is a sort of deal of which the unity of *majlis* is a precondition. Earlier, it has been cleared that the term unity of *majlis* is applied to the sameness of the time of concluding the deal; it does not necessarily require the presence of both the parties under single roof. More so, the sale deals through Internet take place in writing and for the deals to be concluded in writing the Islamic *Fiqh* makes no condition of the unity of place for the concluding parties[2]. In this way the deal of sale and purchase shall be regarded lawful even if the deal concluding parties stand on a distance of thousands of miles from each other. The only condition is that the second party must react to the proposal immediately after his receipt of the message from the first party.

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[1] Fathul Qadir

[2] Badaius Sanaie 3/335

> "Correspondence is like addressing." The same rule is applicable to the messaging. Going by this rule the *majlis* in which the writing or the message reaches the other party shall be regarded the same," (in fact an extension of the *majlis* of dispatch of the writing or message. –Ed)[1]

The same point has been expressed by a contemporary, great expert in Islamic law:

> "The same is the case of the situations in which offer is made by a person to another through the telephone or by any other similar system of communication."[2]

Ibne Abiden Shami has written the following words to express the legality of concluding sale-purchase deals through the medium of correspondence:

> "The sale and all other dealings could be concluded by way of writing."[3]

The Malikites too share the same view, i.e., sale by writing has full legal bearing.[4]

To conclude, the sale-purchase deals concluded by the Internet is fully legal and correct.

Nikah through Internet

If the offer and consent of marriage is made on the Internet in writing and each party happens to have its own set of two witnesses, the marriage shall be re-

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[1] Hidayah 3/9.

[2] al-Fiqhul Islami wa Adillatuhu 4/321.

[3] Raddul Muhtar 7/26.

[4] see for detail: al-Sharhus Saghir 3/21, 13, 14.

garded legally valid. In the Hanafi school of jurisprudence a similar instance of marriage is available.

> "If a man sent a written marriage proposal to a girl, or sent a message in this regard to her through the intermediary of an envoy and the addressed girl expressed her consent in presence of two witnesses, the marriage will come into being. For the unity of *majlis* is being found here, even through not physically. The words spoken by the envoy to the proposed girl are in fact of the sender; the envoy has no role more than conveying the words of the original speaker to the addressed party. The same being the case of the written proposal (of marriage etc); it is as good for the purpose as the address itself. So, hearing the words of the messenger and reading the writing of the sender in fact is the act of hearing or reading the words of the original speaker or writer."[1]

This example is fully applicable to the concluding of marriage through the Internet, for the condition of the unity of *majlis* in fact is being met here.

The Shami too has dealt with the problem of concluding marriage by way of writing and has arrived at the conclusion that it is fully legal, and marriage in writing is as much legal as the one concluded by the exchange of address. [2]

To conclude the discussion on the point, the offer/proposal and the consent of marriage made through the Internet shall be legally correct from the

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[1] Tatarkhamia 3/75, Fathul Qadir 3/109, Alamgiri 1/369.

[2] Raddul Muhtar 4/74.

Hanafi point of view, and the *nikah* shall be considered valid. But, to other three schools of Islamic jurisprudence, i.e., the Shafai, the Maliki and the Hambali, however, the written proposal and consent is not regarded valid. Hence the marriage over the Net invalid.[1]

Concluding the sale-purchase deals through videoconferencing

Concluding the sale and purchase deals through videoconferencing in fact is a form of business transaction between two non-present parties. For concluding such a type of sale-purchase deal the unity of *majlis* is not a condition. Moreover, in videoconferencing the parities are able to talk to and see each other. This aspect brings about the unity of *majlis,* at least impliedly. Such sale-purchase deals, therefore, are fully valid. To quote here an authority:

> "The unity of *majlis* is applied to the situation in which both the dealing parties are available in the same place. Precisely speaking, the offer and consent is made in the single sitting in the way that the *majlis* of offer and consent is united even though the dealing parties stand apart from each other. For the unity of *majlis* what is necessarily required is the unity of time. Thus the concept of *majlis* combines the dealing parties, thereby facilitating the dealing for the

[1] al-Fiqhul Islami wa Adillatuhu 7/46 Asssharuss Saghir 3/350.

contracting parties.[2]

The same thing has been expressed by the author of the al-Hidaya in the following words:

> "For the *majlis* combines the scattered. Therefore, its different hours are treated as one."[1]

In this regard the statement of Dr. Wahba Zuhaili is quite decisive:

> "The *majlis* of transaction in fact is the condition in which the parties are engaged in concluding their business deal. To use another expression, the unity of the parities' mutual talk at the place of concluding the deal."[2]

To conclude the discussion, sale-purchase deals by way of videoconferencing is valid as it facilitates the combination and unity of the exchange of talk between the parties, and that is sufficient for the validity of a sale deal.

Sale and purchase over telephone

The legality or otherwise of concluding sale-purchase over the telephone primarily hinges upon the meaning and importance of the unity of the *majlis*. The discussion furnished above makes it clear that the unity of *majlis* basically denotes the unity and combination of the time during which parties conclude a sale deal. The unity of time doesn't necessarily require the sameness of the place. Based on this explanation of the concept of the unity of *majlis*, the sale deal concluded

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[2] al-Fiqhul Islami wa Adillatuhu 7/39.

[1] al-Hidayah 3/19.

[2] al-Fiqhul Islami wa Adillatuhu 4/196.

over the telephone shall be regarded legally valid.

Nikah through the telephone

There can be two ways of contracting marriage over the telephone. First, involving the HAND FREE instrument which facilitates hearing for all those present in the *majlis*. For the validity of the *nikaah* it is a precondition that the witnesses are able to hear the words of proposal and consent. Since in the case of using the telephone for contracting marriage this condition is fulfilled, the marriage contracted over telephone shall be regarded valid.

> "Hearing of the consent and proposal by the parties and the witnesses is a precondition for the validity of marriage." [1]

Unity of *majlis* too is a precondition for the purpose and the time aspect of the unity of *majlis*, the most important constituent of the unity of *majlis*, is also being fulfilled here.

The other way of the use of telephone is that the instrument is not a HAND FREE one. Since such an instrument can't facilitate the hearing of the proposal and consent to the witnesses, the *nikaah* thus contracted shall not be valid.

However, if a party contracts his/her marriage over the telephone through appointing another party as his/her attorney. To explain it, the man or women may say to another party over phone to marry him/her and the addressed party called two witnesses

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[1] Raddul Muhtaar 4/73.

and said before them that he/she has contracted his/her marriage with woman/man so and so, the marriage shall be regarded valid. To quote here an authority:

"If a woman, for instance, made a man her attorney to marry her and he, as her attorney, said "I am a witness to that I married myself to the woman so and so," the marriage shall be valid. (If he expressed this in presence of two witnesses) But, if the witnesses are not acquaintant with the woman or man, the *nikaah* shall not be valid unless the parentage and identity of the non-present party is duly mentioned. However, if the witnesses are duly acquaintant with the non-present party, the *nikah* shall be valid even if the parentage and identity is not mentioned."[1]

[1] Khulasatul Fatawa 2/15.

Entering into business and social contracts by Internet and other modern communicational systems

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While studying the *Fiqhi* literature we come across many types of *aqd* (contract), following no special order or a binding line of thinking. Those types of *aqd* are the following: (1) *Ijara* (leasing, tenancy), (2) *Istisnaa* (preparing and supplying the commodity on advance order), (3) *Bai* (sale and purchase), (4) *Hawala* (cession, assignment) (5) *Kafalah* (security, guarantee) (6) *Wakalah* (attorneyship) (7) *Sulh* (………) (8) *Shirkat* (sharing) (9) *Muzarbah* (speculation) (10) *Hibah* (gift) (1) *Rehn* (mortgage (12) *Muzara'ah, Musaqat* (crop-sharing) (13) *Wadi'at* (trusting deposit) (14) *Aria* (loan) (15) *Qismah* (allotment, apportionment) (16) *Wasiat* (bequeath) (17) *Qarz* (credit) (18) *Zawaj* (marriage), etc.

Here we may face a natural question: does the *Shari'at* permit other contracts besides the ones mentioned above? According to some jurists no other contracts could be entered in to than the specified in the *Sharia'h*. The learned scholars, however, hold that other contracts too shall be as much legal and binding as those mentioned above, as long as they are within the parameters of the established rules and norms of

the *Shari'at* (for further detail, c.f. Masadirul Haq fil Fiqhil Islami by Sinhoori 1/62). The latter view is based on the word of the Holy Prophet (SAWS) which says: The Muslims are bound to their conditions and terms."[1]

Present age has witnessed a marked expansion and advancement in so far as the means and systems of communication are concerned. This phenomenon gave rise to newer and hitherto unknown modes of conducting the contracts and business and financial dealings. From among these is the conducting of the business and other contracts and financial dealings by Internet and other modern systems of communication. The following lines are intended to discuss the point in a fairly detailed manner.

- For the conclusion of all the contracts and dealings involving the monetary defrayal, the mutual consent of the parties constitutes a primary condition. Mutual consent in fact is an inmost activity which is expressed by the words of offer and consent, united in terms of place and time.

To quote Allauddin Karani, a renowned Hanafi jurisprudent:

> "And what is related to the place of concluding the deal is only one thing. That is the unity of the *majlis* in the meaning that the proposal and consent should take place in single *majlis*."[2]

A contemporary authority, Dr. Abdur Razzaq Sin-

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[1] Abu Dawood Chap. Sulh.

[2] Badaius Sanaie 4/324.

hori, writes:

> "The proposal and consent must be made during the same *majlis*, for the unity of *majlis* is a precondition for the validity of the deal. This being the concept of the sitting of concluding the business deal. And this is meant to limit the time period. Within the same period of time, it will also right to separate the consent from the proposal in order to facilitate time for the addressed person out of the dealing parties to contemplate the deal and consider all the aspects involved, and then go ahead with the deal or withdraw himself from concluding it."[1]

Having furnished the preliminary important points of the discussion, we will now make eight headings to discuss each point with its necessary details.

1. What is the *majlis* of *aqd?*

According to the *fuqaha* the *majlis-e- aqd* is the state in which the business parties negoliate a deal. To use another phraseology, the exchange of talk between the offering and consenting parties must be united from the time aspect. Defining the *majlis*, Dr. Wahba Zuhaili writes:

> "The sitting of deal is the state in which the parties are engaged in negotiating and concluding a deal. To use another expression, it is the unity of the talk between the dealing parties about the deal itself."[2]

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[1] Masadirul Haq fil Fiqhil Islami 2/6.

[2] al-Fiqhul Islami wa Adillatuhu 4/106.

2. What does the unity and disunity of the *majlis* mean?

Unity of time between the talks of the offering and consenting parties in termed as the unity of *majlis*. In case the exchange of talk between the parties is united but the time is different, it shall be termed to be the disunity of the *majlis*. Refereeing to the same point, the Shami writes:

> "If the *majlis*, (of talk between the parties) differs, for instance, one party made offer but the other party stood and left the place or engaged in any other work, the offer shall turn invalid, because the precondition for the unity of *majlis* is the unity of time between the offer and consent."[1]

The above-cited quotations clearly speak of that what is preconditionally required is the unity of time between the offer and consent and not necessarily the unity of place. If the unity of time between the events of offer and consent is achieved, the unity of *majlis* too shall be regarded as achieved even if the parties happen to be present at different places. This also gains strength from the fact that the Islamic jurisprudents have declared valid the dealings and transactions negotiated and concluded through writing and the exchange of messaging in which the parties stand at undeniably different places. Dr. Zuhaily has cleared this point in the following words:

> "The unity of majlis does not necessarily mean being the dealing parties at the same place; because it

[1] Hashia Ibne Abideen 4/69, al-Bahrur-Raiq 3/148.

is quite possible that the parties might be concluding the deal being at different places but their talk is interlinked by any means of communication. For example, concluding the deal by telephone or correspondence. The meaning of the unity of *majlis* therefore, is the unity of the time in which these are engaged in concluding the deal." [1]

Quoting from the Khulasatul Fatawa, Ibnul Hammam has cleared the same by exemplifying as:

"Based on the unity of *majlis*, if, for example, both the parties are walking, or are on an animal and the consent occurred immediately after the offer, the sale deal shall be regarded valid. The *Khulasatul Fatawa*, with reference to the *Nawazil*, says: "If the consent is expressed after walking one or two steps it will be valid. And if the parties, for instance, are walking, the offer will undoubtedly occur on another place."[2]

In short, if the offer and consent occurred at the same time, the unity of *majlis* is achieved, even if the place of both events is different.

3. Concluding deals and transactions through Internet

There might be two possible types of conducting deals and business transactions through the Internet:

1. Each party is available at each end of the Internet using the facility for concluding the same deal. It is termed as ON LINE BUSINESS. Since in this type

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[1] al-Fiqhul Islami wa Adillatuhu 4/108
[2] Qadir 5/461, Badaius Sanaie 4/325

ot transaction both the events ot otter and consent occur concomitantly to facilitate the unity of *majlis*, there is no legal problem in it as long as other preconditions are properly met.

2. One party is not available on the Internet at the time when the deal is being negotiated and concluded, and the deal is to be concluded on the basis of the order received from one party and the second receives the answer thereafter. That is, the related documents are sent out to the party by way of scanning and then the answer is received in the same manner. Since the latter mode of business deal is very much similar to doing business by way of correspondence, the business deals concluded this way shall be valid.

   Discussing this point, Allama Kasani writes:

"Actually, in concluding a sale-deal one condition from one party regarding the *majlis* depends on the other side rather than hinging the other condition on the second party out side the *majlis*. This is a consensual proposition, except that one party faces the other party, or the sale deal takes place by correspondence or through the intermediary of a messenger."[1]

4. *Nikah* through the Internet

The *nikah* can't be contracted unless the proposal and consent are made in the same *majlis* before two witnesses. To quote an authority here:

[1] Badaius Sanai 4/325

> "Besides the unity of *majlis* of proposal and consent, the presence of two witnesses is essentially required. So, if a man married a woman under the testimony of Allah and His Messenger, the marriage shall not be valid."[1]

So, if the written proposal and consent is being seen and read by the witnesses on the computer screen, it shall be sufficient to meet the condition of the witnesses. For though the witnesses are not hearing the words of the marrying man and woman, yet they are reading it and this too is enough for the purpose. This type is quite similar to conducting marriage through correspondence, in which the witnesses are able only to read their written proposal and approval. In case of the use of Internet for the purpose, the reading shall be regarded as good as the hearing. The point may well be supported by the following citation from Allauddin Kasani.

5. Is it lawful for a third person to use the deal particulars available on the Net for his own trade advantage?

There are two types of doing business on the Internet:

First, by using a secret system and thus barring the third person from knowing any detail of their business deals and transactions without the consent of the parties.

The other type is to use an open system. In this

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[1] Majmaul Anhar Sharh Multaqal Abhur 1/320

type a third person too may get access to the specifics of the deal. But even in this type it is almost impossible for a third party to stealthily get in to the specifics without the knowledge of the original parties.

The detail furnished above makes it quite clear that a third party can have no access to the details of the business deals concluded on the Internet without the knowledge of the original parties, nor he is able to use those details for his own business advantages. Since a third person can not get access to the deal specifics without consent from the original parties, and doing so does not involve any sort of violation of any rule of the *Shariah,* the third person is allowed to use the deal details for his own benefit. But without the consent from the original parties it shall not be lawful.

6. **Sale and purchase and business transactions by videoconferencing**

Those negotiating business transaction and sale deals by videoconferencing not only hear the words of their talk but see each other as well, even though their physical location my be different from one another. So if the offer and consent occur concomitantly, and other provisions are properly met, the deal shall be held valid, because for the validity of business transactions taking place between two physically non-present parties the unity of the time of proposal with that of the consent is a precondition. To quote Dr. Wahba Zuhaili:

> "The unity of *majlis* does not necessarily mean being transactors located in the same place. The loca-

tion of one party may some time be different from another party if a medium of connectivity unites them like telephone or correspondence. The unity of *majlis,* rather, denotes the no-distance between the events of proposal and consent during which the parties are engaged in negotiating the deal."[1]

7. Conducting sale deals through telephone

The validity or otherwise of conducting sale and purchase deals through the telephone chiefly depends on the meaning of the unity and differentness of the *majlis*. As mentioned earlier, the unity of *majlis* denotes the unity between the time of the events of offer and consent and not necessarily the unity of the places of their location. Since the telephone facilitates the unity of time between the events of proposal and consent, the phone-concluded sale deal shall be valid. But while negotiating the deal, if the talk diverted to another subject, it will amount to the change of *majlis* which will render the sale deal invalid. To quote Dr. Abdur Razzaq Sinhari:

"As for conducting business deals through telephone or any other system of communication, from the time aspect it is a deal between the two physically present parties; and between two non-present parties, if taken from their locational viewpoint. So, the rules related to both the types shall have to be considered. In this regard the Article No. 88 of the Iraqi Civil Law states the following, "Concluding the business deals through telephone or any other

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[1] al-Fiqhul Islami wa Adillatuhu 4/158.

similar way shall be regarded as a deal between two present parties in so far as the time is concerned; and between two non-present parties if the place is taken into account."[1]

8. *Nikah* by telephone

So far as the *nikah* by telephone is concerned, according to the *Shariat* the proposal and consent must be made in the same sitting in presence of two witnesses. Further, if the offer and consent have been expressed orally, both the witnesses must be able to hear them. Allama Shami has pointed to this rule in his following words:

"Hearing of the offer and its approval by the witnesses is a precondition for the validity of marriage.[2]

There might be two types of concluding marriage on the telephone:

1. Using such an instrument which might facilitate the hearing of the exchange of the offer and consent between the parties to the witnesses. For this two ways are in current use: (a) employing more than one receivers, thereby enabling the witnesses to hear the words of offer and consent. (b) Use of a HAND-FREE set.
2. Using the simple phone instrument which lacks the above-mentioned facility and hence the hearing of the offer and consent is limited to the par-

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[1] al-Hamish ala Masadiril Haq fil Fiqhil Islami 2/27

[2] Raddul Muhtar 4/73

ties excluding others, i.e., the witnesses. As far as the first type is concerned, if the offer is linked with the consent and both the events are heard by the witnesses, the *nikah* will be fully valid as it meets all the preconditions involved. As regards the latter type, since in it the witnesses are not able to hear the exchange of offer and consent between the parties, it shall be regarded invalid as it fails to meet the conditions of being the event of offer and consent witnessed and hared by the witnesses. The *nikah* this way, however, be concluded through the intermediary of an attorney. The offering party (either man or woman) may appoint the other party as his/her attorney who then may express his/her approval before two witnesses. But the witnesses must be aquaintant with the non-present party. If the situation is so, the marriage shall come into being. To quote Allauddin Kasani here:

"then, the *nikah* may be concluded by way of attorneyship and correspondence as by the oral exchange of the proposal and consent, for the dealing carried out by the attorney is as good as the dealing carried out by the client himself; and the statement of the envoy is the same as of the sender."[1]

Important Note

Whole the discussion furnished above basically depends on the assumption that the unity of *majlis* de-

[1] Badaius Sanai 2/488, Khulasatul Fatawa 2/15

notes the unity of time of expression of offer and consent with the possibility of difference between the location of the parties. But, on the other hand, if the concept of the unity of *majlis* is supposed to denote the unity of both the time and place, as is better suggested by most of the juristic statements, then the realizations of both the aspects of unity of *majlis* shall be required to make the business deals and marriages valid. To quote Kasani again:

> "As far as the place of concluding the deal is concerned, it must be the only one. The unity of *majlis*, in this sense, shall be realized only when both the offer and approval take place in the same sitting (of the same place). In case the *majlis* becomes different, the deal shall not be considered valid."[1]

Mujallatul Ahkamil Adlia too defines the concept of the unity of *majlis* which is good enough to suggest that the unity of *majlis* involves the unity of place as well.[2]

Abdul Razzaq Sinhori too has defined the unity of *majlis* in a much similar manner. To quote him:

> "The sitting of negotiating and concluding the deal is the place where the dealing parties are present; it begins from the issue of offer and continues till the parties are engaged in their dealing, without showing any sing of their turning back from the dealing procedure."[3]

The long and short of it is that if the concept of the

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[1] Badaius Sanai 4/324

[2] Mujallatul Ahkamil Adlia, p. 38 Article 181

[3] Masadirul Haq fil Fiqhil Islami 2/6

unity of *majlis* is taken to denote the unity of place beside the unity of time of offer and approval, then the difference shall have to be maintained between the *majlis* of the present dealing parties and the non-present parties. While the *majlis* of the present parties shall have to be united in terms of both time and place, the *majlis* of the non-present dealing parties will need not such a combined unity. Pointing to the same difference, Dr. Sinhori says:

> "That is why we have the opinion that the sitting of dealing between the present parties is different from that of the non-present parties."[1]

Whatever the denotative meaning of the unity of *majlis*, the rulings shall remain the same as furnished above.

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[1] Masadirul Haq fil Fiqhil Islam 2/73

A Glossary of select *Fiqhi* & general Islamic terms

Aqd: Transaction; deal
Aqd mu'allaq: contingent transaction
Aahaad: Solitary hadiths. A solitary hadith is a report narrated on the authority of the Prophet by one or more individuals, but whose chain of transmission does not fulfill the requirements of *tawatur*.
Aqd munjaz: immediately enforceable contract
Aqidaan: contracting parties
Aqil: sane
Aql: Sanity
Adadiyyat: countable things
Ahkam: cules of *Shariah*
Ahliyyat al-ada: Legal capacity for execution
Ahliyyah: Legal capacity
Ajr: rent. wages, remuneration
Ajeer Khas: employee
Ajeer Mushtrak: independent contractor; shared worker
Ajir mithl: equitable remuneration reasonable wages
Al-ba'ir al-sharid: stray animal
Al-darb fil ardh: to make journey
Al-Hajr: interdiction; authoritive prohibition
Al-maal: property, wealth
Al-malaqih: sperm

Al-nafs: life
Al-Ruya: examination inspection
Al-Taslim: delivery
Al-wasiyyah: bequest
Amaal: acts
Amanah: trust
Amr: command
Ariyah: Commodate loan
Asl: Foundation; basis
Asl: Principle
Atah: Lunacy, partial insanity
Ayan: Plural of *ayn*
Ayn: Substance, determinate property
Al-Istidlaal al-Murasal: Unrestricted reasoning; reasoning or argumentation based on unrestricted interests.
Al-Zahiriyyah: Al literalist Islamic legal school, founded in 9th Century Iraq by Dawud Khalaf and later championed by Ibn Hazm, which insists on strict adherence to the literal or apparent meaning (*zahir*) or the Qur'an and Hadith as the only source of Muslim Law.
Azimah: This term indicates the binding force of a *Shariah* rule without consideration of mitigating hard -ship.
Al-Masalih al-Mursalah: Unrestricted interests (sometimes referred to also as public interests). Interests which are not explicitly identified by any text in the Qur'an or *Sunnah* but which are generally agreed upon based on circumstances which arise in human society. Examples of unrestricted interests include the paying of roads, the setting up of admin-

istrative office to handle public needs, the use of traffic signals, the construction of sewers and waste disposal facilities, etc.

Al-Muatah: Fixed price sale; a transaction in which the buyer gives the price of the merchandise to the seller and the seller gives the merchandise to the buyer without uttering words to indicate either an offer or acceptance.

Al-Kulliyyat al-Khamsah: this term refers to the five universal and most general higher objectives (*maqasid)* for the preservation and promotion of which the *Shar'ah* commands and rules have been promulgated. They constitute what is indispensable (*daruri*), for human life and existence. They consist of the protection of religious faith (*hifz al-din*), the protection of human life (*hifz al-nafs*), the protection of intellect (*hifz al-aql*), the protection of progeny (*hifz al-nasl*) and the protection of property (*hifz al-mal*).

Al-Munasabah: Appropriateness. The description of a situation in which a legal ruling and the situation upon which it is based are appropriate to each other in such a way that the ruling leads to the preservation of an interest which in explicitly recognized in the source texts for Islamic Law (i.e., the Qur'an and the *Sunnah*) and is supported by *ikma,* or the consensus of the Muslim community. An example of appropriateness would be the prohibition of alcoholic beverages (legal ruling) based on the fact that such beverages cause inebriation (the situation upon which the ruling is based), where the interest being preserved through the prohibition is the preservation of one's faculty of reason.

Baligh: Person who has attained puberty
Batil: Void, invalid
Bay'al-amanah: Trust sale
Bay'al-fasid: Irregular sale
Bay'al-gha'ib: Sale of something not seen by the par ties to a contract
Bay'al-hasat: Sale taking place through pebbles
Bay'al-haml: Sale of facts in the womb
Bay'al-inah: Buy-back agreement
Bay'al-juzaf: Sale of food stuff at random
Bay'al-kaali bi al-kaali: Sale of credit for credit
Bay'al-ma'dum: Sale of non-existent thing
Bay'al-majhul: Sale in which the object of sale its price the time of its payment and delivery remains unknown
Bay'al-mu'ajjal: Credit sale
Bay'al-muhaqalah: Sale of wheat for wheat in ear of grain.
Bay'al-mukhadarah: Sale of fruits on tree before their benefit is evident
Bay'al-mulamasah: Sale that is effective by touching a commodity
Bay'al-munabadhah: Sale of fresh fruit in exchange of dry fruits
Bay'al-muzabanah: Sale of fresh fruits for dry fruits.
Bay'al-salam: Sale with advance payment for future delivery of goods
Bay'al-wafa: Archaic sale for redemption
Bay'al-mutlaq: Sale of commodity with money
Bay'wa salaf: Selling and landing
Bayt al-mal: Treasury
Buy'ual-ayn: Sale of Objects

Bay'al-Aynah: Sale on credit; a transaction in which an item is sold on credit for one price, after which the person who originally sold it buys it back in cash from the person to whom be sold it for a lower price.

Bay'al-Gharar: A term referring to a transaction involving buying and selling in which there is an element of uncertainty concerning the price, the merchandise being purchased, the deadline for payment and/or delivery, or the ability to deliver the merchandise.

***Daman*:** A guarantee; one type of guarantee under Islamic Law is the requirement that if Party A's property is damaged while in Party B's possession, Party B must restore to Party A something identical to the damaged object or, if this is not possible, its monetary value. Other types of guarantees are also detailed in Islamic Law for differing situations.

Damin al-aml: Liability of a partner to complete the work accepted by either partner

Daam'n: Surety guarantor

Darbat al-gha'is: Divers dive

Dayn: Receivable debt; indeterminate property

Diyat: Blood money

Darurah: Necessity. A situation that requires the miti gation of a rule.

***Daruriyyat** (sing. Daruri):* the things that are vital and indispensable for life and existence and constitute the ultimate higher objectives *(maqaasid)* of Islamic law. They occupy the highers position in the hierarchical order of Islamic vai.

***Dbariab** (**Plur. Dhara'i**)*: Means to an end. It may also be called wasilah.

Fahish: Grave
Fasid: Irregular
Fuduli: Self imposed agent an authorized agent
Ghabn: Lesion damage
Ghaban Fahish: Exorbitant loss suffered by a party to a contract or excessive lesion
Gharar: Uncertainty; indeterminacy
Ghasb: Usurpation
Ghasib: Usurper
Ghair lazim: Non-binding
Ghair munjaz: Minor not possessed with discretion
Farz: an obligatory religious duty
Farz-e-ain: all-binding duty
Farz-e-kifaya: non-all-binding
Fatwa (pl. Fatawa): a formal legal opinion issued by a mufti *(ijurisconsult)* based on a question posed to him by an inquiring person (called *mustafti).*
Fitrah: The original God-given nature of man.
Faqih **(pl.***'fuqaha):* A scholar of Islamic jurisprudence who concern himself with the details of Islamic legal rulings and their legal bases.
*Fiqh***:** The study and application of Islamic legal rulings as based upon detailed evidence; the corpus of practical legal rulings in Islam.
Gharar: uncertainty or risk involved in a transaction.
Heelah: (pl., *Hiyal*): Stratagem, artifice; an attempt to exploit that which is legitimate for an illegitimate purpose or aim; or, that which appears to be legitimate but is not.
Hadd: punishment prescribed in the Qur'an or *Sunnah*
Habs: Trust. It is synonymous with the term *waqf.*
*Hadd (plur. Hudud)***:** Limit, bound. In the Islamic

penal code, the term *Hadd* refers to the set of punishments that have been enunciated and determined in the *Shariah* textual sources (i.e., the Qur'an and *Sunnah* of the Prophet) both in terms of their nature, scope and quantity.

Hajiyyat: Necessary things whose realization is in tended by the *Shari'ah* for the purpose of removing hardship from human life. Next to the *daruriyyat* that constitute indispensable objectives of Islamic law and whose neglect cause severe harm to human life and existence, the *Hajiyyat* are needed for maintaining an orderly society properly governed by the law.

Hikmah: Wisdom. In Islamic jurisprudence, the term *hikmah* refers to the wise purpose or objective for which a *Shari'ah* command has been instituted, which revolves around bringing good to human beings and/or preventing harm from them. It may be used interchangeably with the term *maslahah*.

Hiyal (sing. Heelah): Tricks, stratagems, artifices. This term refers to legal devices used to exploit that which is legitimate for an illegitimate purpose or end; or, that which appears to be legitimate but is not.

Hukm: Rule, injunction, prescription.

Hukm Shar'i: the obligation-creating rule. The primary rule of the legal system. According to the majority of legal theorists, the *hukm taklifi* consists of *wajib* (obligatory act), *mandub* (recommended act), *haram* (prohibited act), makruh (disapproved act), and *mubah* (permitted act).

Hukm Wadhih: the declaratory rule. A secondary rule

of the legal system that facilitates the operation of the primary rules. It includes *sabab* (cause), *shart* (condition) and *maani* (obstacle or impediment).

***Huquq** (sing. Hqq):* Rights, entitlements.

Huquq al-Abd: The rights of man.

Huquq Allah: The rights of Allah.

Ijtihad: Independent reasoning. Technically, this term refers to the effort exerted by a qualified jurist (faqih/mujtahid) to arrive at the meaning intended by the lawgiver in the textual sources of Islamic Law and apply it to its subject-matters in the real life of human beings.

Ijaab: Making offer of something to another party

Illah: Ratio legis, cause, reason, rationale, considered to be the most important pillar of *qiyas*, *illah* is defined as being the attribute or quality in a human act that constitutes the ground or basis of a *Shari'ah* rule.

Istislaah: the act or process of reasoning on the basis of *maslahah*.

Istidlaal: The literal meaning of the term istidlal is to seek evidence (dalil). In the context of Islamic law, it is the pursuit of legal evidence, be it textual or otherwise, on the basis of which one may arrive at a sound ruling or judgment on this or that question or situation.

***Istihsan*:** Juristic preference. A decision, in the process of arriving at a legal decision, t refrain from applying to a given situation the same ruling which has been applied to analogous situations in favor of another ruling which is more in keeping with the higher objectives of the Law. In other words, juristic preference involves giving human interests and the objec-

tives ot the Law priority over the results ot *qiyas*, or analogical deduction.

Jama: Union, gathering together or all-comprehensiveness. A term used in the realm of Sufism to refer to a spiritual state in which the individual has so fully concentrated himself or herself on the Divine that he/she is no longer aware of any separation between the Divine and the created.

Khula: Divorce at the instance of the wife in return for a monetary compensation paid to the husband.

Jibillah: the natural state according to which Allah has created man.

Kulliyyat **(plur. *Kulli***, meaning universal): the uni ver-sal things constituting the ultimate higher objectives of Islamic Law.

Li'an: Oath of condemnation, imprecation. Disavowal of paternity by mutual oath of both spouses. This oath is resorted to by the husband in refutation of an accusation or *qadhf* by his wife, and by the wife in refutation of an accusation of adultery by her husband.

Maqasid **(sin. *Maqsad*):** Literally, objectives, or pur poses, this term is frequently used alone to refer to the higher objectives of Islamic Law in general, that is, *maqasid al-Shari'ah.*

Mafsadah: Evil, harm. It is the opposite of *maslaha.*

Manaat: Basis, ground. This term is used synonymously with the term *illah.*

Majlis: sitting. In the Fiqh terminology the getting-togather of the transacting parties.

Mustahab: literally, desirable act in the religious practices.

Makruhe Tahreemi: practice held displeasing; forbidden but less than *Haraam*

***Maslahah*:** Interest, benefit, something good.

Maslihe Mursalah: Interest or benefit that has not been regulated or qualified by a specific text and is based on a general principle of the *Shari'ah* or its spirit.

Mu'allal: A Shari'ah rule whose *illah* can be known either textually or by rational methods that are detailed by legal theorists under the heading of *masalik al-illah* (methods of establishing the effective cause) in conjunction with the discussion on *qiyas.*

Mu'amalat: Social dealings, transactions.

Mubaah: permissible

Muhallil: A man who weds an irrevocably divorced woman (*mabtutah*) with the intention of divorcing her so that her previous husband can marry her again. This type of marriage contract is called nikah al-tahlil and is prohibited in the *Shari'ah.*

Munaasabah: Appropriateness, suitability. In the technical language of the legal theorists (*ustiliyyaun*), it is a meaning in a person's act that necessitates the obligation, prohibition or permission of that act. Such a meaning is an apparent and constant attribute (*wasf*) deemed by reason to constitute the basis of the *Shari'ah* rule or command, as it is suitable (*munasib*) to the purpose of the Lawgiver in instituting that *hukm*. The purpose of the Lawgiver consists of realizing benefit (*maslahah*) or preventing harm (*mafsadah*) or of achieving both goals at the same time.

Nikah al-Muhallil: It is a marriage contract in which a man marries an irrevocably divorced woman with

the intention of divorcing her so that she can re-marry her previous husband.

Nikah al-Shighaar: This is a form of marriage in which one man gives his female ward in marriage to another man on the condition that the other man will give his ward in marriage to the first, without there being any dower except the body of the woman in exchange for that of the other. Such a contract is not allowed in the *Shari'ah.*

***Qatt*:** Certainty, based on conclusive textual or rational evidence.

Qat'i: Definitive. A legal proof is considered as qat'i when it is conclusive and denotes certainty.

Qiyas: Analogy, syllogism. In Islamic jurisprudence, *qiyas* or analogical reasoning consists of extending the rule of a specific case (called *asl*) established by the *Shari'ah* textual sources to a new case awaiting legal decision on the basis of a sound cause

Qiyas Kulli: A kind of analogy in which the hold of individual texts and specific cases in released and reasoning proceeds in line with a general principle or set of general principles derived from the Shari'ah texts considered collectively. It is also called *qiyasa mursal.*

Qubool: accepting the offer; giving consent to the offer *(ijaab)*

Qadhf: Falsely accusing someone of sexual misconduct.

Qirad: Sleeping partnership. An agreement between two people on the basis of which one of them will supply the funds while the other will undertake the work, after which whatever profits accrue will be

shared by both; however, any loss is to borne by the person who supplied the funds.

Rafidites,* or *rejectionists: A sect of *Shi'ites* who ap prove the practice of defaming the Companions. They were first referred to as *Rafidites* (Arabic, Rawafid, sing, Rafidah) because they rejected their imam, Zayd ibn Ali when he forbid them to insult Abu Bakr and Umar ibn al-Khattab.

Rukhsah (plur. *Rukhsah):* Exemption, silence. It represents the mitigation of a rule by substituting for it a more lenient one, due to some hardship.

Sadd al-Dhara'i: As a jurisprudential rule, the term sadd al-dhara'i means the prohibition of evasive legal means that is, blocking the lawful means to an unlawful end.

Shari'ah: Way, water spring, watering place, law. In Qur'anic use, the term shari'ah denotes the whole of the Divine teachings pertaining to matters of belief and conduct. In the terminology of the jurists, it refers to the body or legal commands instituted by the Qur'an and Prophetic sayings.

Sunnah: way and practice of the holy Prophet (SAWS)

Sunnate mu'akkada: an emphasized practice of the Holy Prophet (SAWS)

Sunnate ghair mu'akkada: Less emphasized practice of the Prophet (SAWS)

Sadd al-Dhara'i: The prohibition of evasive legal devices, or of anything which has the potential of leading to that which is forbidden.

Siwak: A small stick used for clearing the teeth.

***Shadhdh*:** Irregular statements; statements which are in conflict with those made by the majority of juris-

prudents.

Ta'abbud/ta' abbudi: Devotion or worship. It refers to the commands or rulings in Islamic law for which one can't provide an explanations through human reason, such as the number of rak'ahs in prayer.

Tabarru: Donation.

***Tahayyul*:** Manipulation, tricking, use of artifice.

Tahqiq al-Manat: the confirmation of the existence of the illah in the new case (far) to which a rule is to be extended through *qiyas.*

Tahsiniyyat: Embellishments, improvements. In the hierarchical order of the *Shari'ah* objectives, the *tahsiniyyat* come next to the *hajiyyat* and refer to those aspects of Islamic Law that bring comfort and ease in human life. They are not needed to such an extent that without them the law becomes inoperable or deficient and relinquishing them is not detrimental to the daruriyyat or the hajiyyat. They are meant to improve the general character of the *Shari'ah.*

Takhrij al-Manat: The *mujtahid's* derivation of the suitable attribute for the *hukm* (or *illah*) is known as *takbrij al-manat.*

***Ta'lil*:** Causation, rationalization. The act of identifying the effective cause or underlying reason (*illah*) of a *Shari'ah* command

Tanqih al-Manat: Emendation and refinement of the effective cause (*illah*) by excluding *(ilgha*) some of the attributes or states of the act from being the effective cause or ratio legis (*illah*) of the command.

Tawatur Ma'nwi: Thematic recurrence of reports.

Ta'abbud/ta'abbudi: Meaning literally, devotion or worship. Those commands or rulings in Islamic Law

for which one can't arrive at an explanation through human reason, and for which there is no known basis or occasion. Examples of such rulings include the number of *rak'ahs* of which the various ritual prayers consist, the prescribed punishments for violations such as sexual misconduct and slander, etc.

Tawatur, or tawatur al-khabar. The report of an event by a group of individuals sufficiently large and disparate that it would be impossible for them to have colluded in falsification

Tayammum: Waterless ablutions. The practice of wiping the face and hands with clean earth, dust or sand with the intention of achieving ritual purity

Usul al-Fiqh: The principles or fundamentals of Islamic jurisprudence.

Wajib: obligatory command of the *Shariat* but next to the *farz.*

Waaf: Trust, endowment.

Wazi: Restraining force.

Foreword to the English edition

(A Note by Translator)

Present volume is the English version of the papers presented to the Twelfth and the Thirteenth Seminars of the Islamic *Fiqh* Academy of India held respectively in 2000 and 2001 to discuss the use of Internet and other modern systems of communication for religious purposes; and concluding business transactions and social contracts through the Internet and other means of communication.

Since the number of the papers presented was large enough, mostly consisting of similar arguments, it deemed fit to prepare the English version with a selective approach.

Actually, all the papers presented to the twelfth seminar are classified as:

- Detailed papers
- Abridged papers
- Shortly expressed written views

With a view to give a fair representation to all the three categories of the papers and views, the editor and translator thought it better to select the comparatively more comprehensive items from each category, according to the following order.

- The questionnaire
- Statement of the theme
- Four out of the first category, i.e., detailed ones
- Three out of the second category, i.e., abridged

ones

- Three out of the shortly written views
- This is about the first pare

The same selective approach has been preferred in the preparation of the second part.

All the papers of the Thirteenth Seminar have been arranged in two categories:

(a) Longer papers

(b) Comparatively shorter ones, written by new-aged *Ulama* and the men of *Fiqhi* insight.

As for the English version of the said Urdu papers, the translator can claim no more than that he has tried his best to render the original Urdu into English as faithfully as possible. And in so doing his knowledge of the Arabic language and direct access to the wealth of Islamic religious learning and its basic sources has proved of immense help for him.

Present English version is an attempt of the Islamic Fiqh Academy of India, the subcontinent's prestigious institution of Fiqhi and Islamic legal research and studies, particularly in respect towards new legal challenges, to acquaint the English readership with the Islamic solution to the legal and moral problems occasioned by the modern means of communication have it hoped, that the Academy's this academic present shall be welcomed by the target and the general readership.

Md. Ibrahim Khan
07-11-07
Lucknow